TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 632

JESSE CANTWELL, NEWTON CANTWELL AND RUSSELL CANTWELL, APPELLANTS; JESSE CANTWELL, PETITIONER,

vs.

THE STATE OF CONNECTICUT

APPEAL FROM AND CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

FILED JANUARY 11, 1940.

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[fol. 1] [Caption omitted]

IN COURT OF COMMON PLEAS, CRIMINAL SIDE, NEW HAVEN COUNTY

STATE OF CONNECTICUT

vs.

NEWTON D. CANTWELL, JESSE L. CANTWELL, RUSSELL D. CANTWELL

INFORMATION (NEWTON D. CANTWELL)

[fol. 2] Edwin S. Pickett, Prosecuting Attorney of the Criminal Court of Common Pleas of New Haven County, now here in Court, information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938, and for a long time prior thereto, Newton D. Cantwell of Woodbridge, with force and arms, did then and there publicly exhibit or advertise certain offensive, indecent or abusive matter concerning certain persons whose names are to the Attorney unknown, against the peace, of evil example and contrary to the statute in such case made and provided.

Second Count

And the Attorney aforesaid further information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938 and for a long time prior thereto, Newton D. Cantwell of Woodbridge, with force and arms, did by his advertisement, ridicule or hold up to contempt certain persons or class of persons whose names are to the Attorney unknown, on account of the creed, religion, color, denomination, nationality or race of such persons or class of persons, against the peace, of evil example and contrary to the statute in such case made and provided.

Third Count

And the Attorney aforesaid further information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938, and for a long time prior thereto, Newton D. Cantwell of Woodbridge, with force and arms, did then and there solicit money, services,

subscriptions or other valuable things for an alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit said Newton D. Cantwell was soliciting, without said cause having been approved by the Secretary of the Public Welfare Council of this State, against the peace, of evil example and contrary to the statute in such case made and provided.

[fol. 3] Fourth Count

And the Attorney aforesaid further information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938, and for a long time prior thereto, Newton D. Cantwell of Woodbridge, with force and arms, did have in his possession with intent to sell, lend, give, offer or show, certain books, pamphlets, paper or other things containing obscene, indecent or impure language, against the peace, of evil example and contrary to the statute in such case made and provided.

Fifth Count

And the Attorney aforesaid further information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938, and for a long time prior thereto, Newton D. Cantwell of Woodbridge, with force and arms, did disturb the public tranquility by certain acts or conduct inciting to violence or tending to provoke or excite others to the Attorney unknown to break the peace, all of which is against the peace and contrary to the Common Law, whereupon the Attorney prays the advice of this Honorable Court in the premises.

Edwin S. Pickett, Prosecuting Attorney.

In Criminal Court of Common Pleas, New Haven County

Information (Jesse L. Cantwell)

Edwin S. Pickett, Prosecuting Attorney of the Criminal Court of Common Pleas of New Haven County, now here in Court, information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938, and for a long time prior thereto, Jesse L. Cantwell, of Woodbridge, with force and arms, did then

and there publicly exhibit or advertise certain offensive, indecent or abusive matter concerning certain persons whose names are to the Attorney unknown, against the peace, of evil example and contrary to the statute in such case made and provided.

[fol. 4] Second Count

And the Attorney aforesaid further information makes that *that* at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938, and for a long time prior thereto, Jesse L. Cantwell of Woodbridge, with force and arms, did by his advertisement, ridicule or hold up to contempt certain persons or class of persons whose names are to the Attorney unknown, on account of the creed, religion, color, denomination, nationality or race of such persons or class of persons against the peace, of evil example and contrary to the statute in such case made and provided.

Third Count

And the Attorney aforesaid further information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938 and for a long time prior thereto, Jesse L. Cantwell of Woodbridge, with force and arms, did then and there solicit money, services, subscriptions or other valuable things for an alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit said Jesse L. Cantwell was soliciting, without said cause having been approved by the Secretary of the Public Welfare Council of this State, against the peace, of evil example and contrary to the statute in such case made and provided.

Fourth Count

And the Attorney aforesaid further information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938 and for a long time prior thereto, Jesse L. Cantwell of Woodbridge, with force and arms, did have in his possession with intent to sell, lend, give, offer or show, certain books, pamphlets, paper or other things containing obscene, indecent or impure language, against the peace, of evil example and contrary to the statute in such case made and provided.

[fol. 5] Fifth Count

And the Attorney aforesaid further information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938 and for a long time prior thereto, Jesse L. Cantwell of Woodbridge, with force and arms, did disturb the public tranquility by certain acts or conduct inciting to violence or tending to provoke or excite others to the Attorney unknown to break the peace, all of which is against the peace and contrary to the Common Law, whereupon the Attorney prays the advice of this Honorable Court in the premises.

Edwin S. Pickett, Prosecuting Attorney.

In Criminal Court of Common Pleas, New Haven County

Information (Russell D. Cantwell)

Edwin S. Pickett, Prosecuting Attorney of the Criminal Court of Common Pleas of New Haven County, now here in Court, information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938 and for a long time prior thereto, Russell D. Cantwell of Woodbridge, with force and arms, did then and there publicly exhibit or advertise certain offensive, indecent or abusive matter concerning certain person- whose names are to the Attorney unknown, against the peace, of evil example and contrary to the statute in such case made and provided.

Second Count

And the Attorney aforesaid further information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938 and for a long time prior thereto, Russell D. Cantwell of Woodbridge, with force and arms, did by his advertisement, ridicule or hold up to contempt certain persons or class of persons whose names are to the Attorney unknown, on account of the creed, religion, color, denomination, nationality or race of such persons or class of persons against the peace, of evil example and contrary to the statute in such case made and provided.

[fol. 6] Third Count

And the Attorney aforesaid further information makes that at the Town of New Haven, within the County of New

Haven, on the 26th day of April 1938 and for a long time prior thereto, Russell D. Cantwell of Woodbridge, with force and arms, did then and there solicit money, services, subscriptions or other valuable things for an alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit said Russell D. Cantwell was soliciting, without said cause having been approved by the Secretary of the Public Welfare Council of this State, against the peace, of evil example and contrary to the statute in such case made and provided.

Fourth Count

And the Attorney aforesaid further information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938 and for a long time prior thereto, Russell D. Cantwell of Woodbridge, with force and arms, did have in his possession with intent to sell, lend, give, offer or show, certain books, pamphlets, paper or other things containing obscene, indecent or impure language, against the peace, of evil example and contrary to the statute in such case made and provided.

Fifth Count

And the Attorney aforesaid further information makes that at the Town of New Haven, within the County of New Haven, on the 26th day of April 1938 and for a long time prior thereto, Russell D. Cantwell of Woodbridge, with force and arms, did disturb the public tranquility by certain acts or conduct inciting to violence or tending to provoke or excite others to the Attorney unknown to break the peace, all of which is against the peace and contrary to the Common Law, whereupon the Attorney prays the advice of this Honorable Court in the premises.

Edwin S. Pickett, Prosecuting Attorney.

[fol. 7] In Court of Common Pleas, New Haven County

[Title omitted]

More Specific Statement as to Paragraphs 1, 2, 3, and 4 of the Complaint—Filed July 25, 1938

The State in the above entitled cases in accordance with the Order of this Court files the following as and for a more

Specific Statement as to Paragraphs 1, 2, 3 and 4 of the Complaints in said cases by alleging:

That on April 26th, 1938, and for a long time prior thereto the accused in the Town of New Haven, did then and there publicly exhibit or advertise certain offensive, indecent or abusive matter concerning certain persons as a class and of the Catholic Religion, and did ridicule or hold up to contempt said class of persons on account of the creed, religion, and denomination of such class of persons by using certain books with the titles, "Riches, Enemies and Preservation", a copy of such books is annexed to this statement and marked State's Exhibit A and setting forth extracts from said books as follows:

Today the so-called "organized Christianity", in which the Roman Catholic Hierarchy and its priests take the lead, entirely disregards the commandments of the Lord and attempts to eat and drink at His table while at the same time they partake of the Devil's table by making their organization a part of Satan's world. Page 79.

This is conclusive proof that the Roman Catholic Hierarchy is Satan's organization, into which he has drawn and entrapped many good persons whom he desires to hold under restraint and away from God. Page 100.

Engraving of nude woman. Page 157.

The doctrine of purgatory is a lie because it is false and because the teaching of that doctrine has worked great injury to millions of persons. Men in the church organiza-
[fol. 8] tions have induced millions to believe that their friends who have died are conscious and are suffering in purgatory and that the prayers of men called priests can relieve them from their sufferings. The people are thereby induced to give up their money to the priests to say prayers for those supposed to be in purgatory. Many an honest man has been induced to pay a large sum of money for such prayers. Certainly this manner of obtaining money is getting it under false pretenses and to the injury of those who pay. The greatest injury, however, is: inducing the living person to believe that his dead friends are suffering Page 183 in purgatory at the hands of Jehovah; and such is a defamation of God's name and tends to turn millions of honest persons away from God; and that is what the Devil is working for. Page 184.

Out of that ingenious lie of Satan has developed and been built up "the Hierarchy of the Catholic Church". Out of that lie of Satan the title "pope" which means "papa," has come. It is a title given to the man who is head of the religious-political organization, the Roman Catholic Hierarchy. Page 196.

Since the time the Roman Catholic organization started in the pope business, and began to have popes, a vacancy occurs from time to time, and such vacancy in that office is filled by the vote of the college of cardinals by voting into office one of their own number. Men without any authority whatsoever from God or Christ Jesus formed and continue to operate the Roman Catholic system or organization. The father of that organization is Satan the Devil. It is the fruit of the Devil's successful scheme to defraud men and reproach God, and by that organization the Devil has succeeded in blinding millions of honest persons who have been drawn to the Roman Catholic organization and who have been induced to believe that such organization is a servant of Christ's, when in fact that organization serves and supports the Devil. Good people who have supported the organization have unwittingly been serving and supporting the Devil's servants. The Hierarchy is the masterpiece of the Devil's organization schemes to defame the name of [fol. 9] Jehovah God and Christ Jesus and to turn away from Jehovah. Page 232.

Because the Roman Catholic Hierarchy poses before the peoples of earth as the representatives and servants of God, but in fact are the servants of the Devil, they are the grossest hypocrites. Page 236.

Tribute money is collected from the living, whose friends have died, and this upon the pretext that some priest of the Catholic organization may utter a prayer for the dead and thus benefit the dead. Such is an oppressive fraud practiced upon the superstitious and fearful. Page 244.

The claim that the pope is the successor of the apostle Peter is false as the Devil himself. Christ Jesus says: "My kingdom is not of this world." The Roman Catholic Hierarchy says, "It is our right to rule and control this world." Jesus said that Satan is the ruler or invisible prince of this world, and this shows that the Roman Catholic Hierarchy is the agent of Satan. (John 12:31; 2 Corinthians 4:4.) The Roman Catholic Hierarchy not only is a friend of the world of Satan, but forms an integral part thereof, and for

that reason alone that wicked organization could not represent God, but is in fact God's enemy. Page 257.

The members of the Hierarchy chuckle in their glee and say: "We have made lies our refuge, and under falsehoods we have hid ourselves. Who knoweth us? and who can see us? We pretend to pray and the dupes will pay." By reason thereof they have been enabled to keep the mass of the Catholic population in ignorance of God and his kingdom, and to continue them in their ignorance is the reason why they warn Catholics to read none of the publications of the Watch Tower. Page 290.

Book "Enemies: * * *

An indecent and obscene picture of a nude woman. Page 29.

An offensive, abusive and indecent picture. Pages between 192 and 193.

[fol. 10] All organizations on the earth that are in opposition to God and his kingdom, therefore, necessarily take the name of "Babylon" and "harlot", and those names specifically apply to the leading religious organization, the Roman Catholic Church, which claims to be the mother of the so-called "Christian religion". That mighty religious organization, foretold in the Scriptures, uses the methods of harlots to induce politicians and commercial traffickers and others to fall into her arms and yield to her supposed charms. In the Scriptures this organization is likened unto a "strange woman", which flattereth with her words", and which entices the credulous persons that are void of understanding to yield to her influence. In the prophecies the "harlot" or religious organization is pictured as bedecking herself in gaudy apparel, and she is represented as sauntering forth and indulging in singing seductive songs to inveigle others into her trap, that she might have personal adulation and praise of men and at the same time reap also pecuniary gain. Pages 198-199.

Such is exactly what the Roman Catholic Hierarchy organization is doing and has been doing from and after 1918, and will continue to do until the beginning of Armageddon; and while she is doing that, Jehovah is doing his "strange work" of exposing her wickedness. The activity of the old "whore" in committing harlotry with all the kingdoms of the world appears to be more than merely establishing diplomatic relationship with all nations and being recognized as a temporal power. He surely means the carrying out of the

objective of the Roman Catholic Hierarchy to set up a Fa-cist government controlling the nations of the earth, that the Hierarchy may arbitrarily rule the nations in a dictatorial manner. Page 288.

Page 292. The prophecy of the Lord shows that modern Tyre, the Catholic organization, commits fornication with all the nations and gains her desire. When the Hierarchy has gained complete temporal power of the earth, that will in her mind fully establish the conclusion that her desire has been fully accomplished, and then she will say "Peace and [fol. 11] safety" and then the "ten horns", that is, all the ruling powers of the nations, "receive power * * * with the beast," the League of Nations combine being in fact a league of Fa-cism or combined Fa-cist governments, denominated by the Roman Catholic Hierarchy. "And the woman (Devil's visible religious organization, the harlot) which thou sawest is that great city (the Hierarchy organization), which reigneth over (combined Facism) the kings of the earth."

Page 295. The Roman Catholic Hierarchy with an air of superiority and with great claim of power and authority from God, have approached the kings of the earth and said to them in effect: "We bestow upon you the divine right to rule, we give you holy sanctions and heavenly blessings; and by reason thereof your positions as political rulers are sacred and are ordained of God, and therefore, so far as the people are concerned, you are viewed as constituting the 'higher powers'; and we who compose the Hierarchy are the spiritual 'higher power'. The true "Higher Powers" are Jehovah and Christ Jesus. The claim that earthly organizations are "the higher powers" is therefore false. In this fraudulent representation and claim made by the Roman Catholic Hierarchy, the harlot proceeds to gain control over millions of gullible men. Such constitutes the "merchandise" and "hire" of the harlot by which she draws men into her clutches. The Roman Catholic Hierarchy has fraudulently posed as the representative of God with full divine authority to bestow blessings on kings, while in truth and in fact she is the representative of the Devil. The Hierarchy uses 'the hire of the harlot' to induce the political powers to believe that she should dictate the policy of the world, and thus carry out her purpose to set up a dictatorial rule of the earth.

Page 301. Fascism and Nazism means one and the same thing and are the instrument of the Roman Catholic Hierarchy, the child of the Devil, to gain control of the earth by the Hierarchy and turn all people against God and his kingdom. The Roman Catholic Hierarchy classes everyone that [fol. 12] is opposed to her as "red" or "communist", and this is done to incite the people against those who stand for whatsoever is right.

Page 324. Scurrilous, obscene, indecent, offensive and abusive picture.

Page 328-329. The chief visible enemy of God, and therefore the greatest and worst public enemy, is the Roman Catholic religious organization. For centuries that organization scornfully and arrogantly has ridden upon the backs of the peoples and nations and robbed the people of their just earnings. The day of that wicked institution must come to an end. That organization, that is to say, the Roman Catholic "Hierarchy of Jurisdiction," for years has boastfully said and still says: "The gates of hell shall not prevail against (us)." These words of Jesus Christ concerning his own organization, which is the habitation of Almighty God, are misapplied by the Roman Catholic Hierarchy; and this is further evidence of the presumptuous sin of that religious organization.

Page 330. It is the Roman Catholic "Hierarchy of Jurisdiction" that has falsely and fraudulently assumed to shep-*a*rd the "Catholic population" and rob them and fleece them.

The Roman Catholic "Hierarchy of Jurisdiction", the religious system, is hypocritical in the extreme; and God hates a hypocrite, a racketeer and a liar, all of which that gang is.

Book Preservation:

On Page 81, there is an offensive, indecent and abusive picture.

State of Connecticut, by Edwin S. Pickett, Prosecuting Attorney.

[File endorsement omitted.]

[fol. 13] IN COURT OF COMMON PLEAS, CRIMINAL SIDE, NEW HAVEN COUNTY

[Title omitted]

DEMURRER TO AMENDED INFORMATION—Filed August 19, 1938

The accused defendants in the above entitled cause of action hereby demur to the amended information filed by the prosecuting attorney herein for the following reasons:

That it appears upon the face of said information as amended:

1. That it is insufficient in law.

2. That it does not state facts constituting any offense under the law in that

(a) there is no allegation of malice or facts which are the equivalent of malice;

(b) there are joined in one statement multifarious allegations of several offenses under several statutes without designation of the statute involved or specification of the count of the original information to which the alleged defamatory language is applicable;

(c) there is no identification of the persons or persons alleged to be exhibited or advertised by the defendants through certain offensive, indecent or abusive matter;

(d) it is no offense under the law to exhibit or advertise offensive, indecent or abusive matter concerning "the Catholic religion" as alleged in the amended information;

(e) there is no identification of the "class of persons" alleged to be ridiculed or held up to contempt on account o creed, religion and denomination;

(f) the exhibiting, advertising or distributing of printed matter described in and set forth in the amended information does not constitute an offense under the law.

3. That sections 6194, 6294, 6066 and 6244 of Connecticut Statutes, under which the said charges are apparently intended to be made, are invalid in that each of said sections [fol. 14] unreasonably restricts and denies freedom of speech, freedom of press and the right of assembly, in violation of the provisions of Sections Five, Six, Nine and Six-

teen of Article One of the Connecticut Constitution, and of the "due process" clause of the Fourteenth Amendment to the United States Constitution.

4. That said sections 6194, 6294, 6066 and 6244 of Connecticut Statutes, under which the said charges are apparently intended to be made, are invalid in that each of said sections unreasonably restricts and denies freedom of conscience, worship and religion, in violation of the provisions of Sections Three and Four of Article One of the Connecticut Constitution, and of the "due process" clause of the Fourteenth Amendment to the Unied States Constitution.

5. That said sections 6194, 6294, 6066 and 6244 of Connecticut Statutes as applied to the alleged activities of each of the defendants herein are invalid in that each of said sections unreasonably restricts and denies freedom of speech, freedom of press and the right of assembly, in violation of the provisions of Sections Five, Six, Nine and Sixteen of Article One of the Connecticut Constitution, and of the "due process" clause of the Fourteenth Amendment to the United States Constitution.

6. That said sections 6194, 6294, 6066 and 6244 of Connecticut Statutes as applied to the alleged activities of each of the defendants herein are invalid in that each of said sections unreasonably restrict and denies freedom of conscience, worship and religion, in violation of the provisions of Sections Three and Four of Article One of the Connecticut Constitution, and of the "due process" clause of the Fourteenth Amendment to the United States Constitution.

The accused defendants, by Otto H. LaMacchia, Joseph Wheless, O. R. Moyle, Their Attorneys.

[File endorsement omitted.]

[fol. 15] In Court of Common Pleas, Criminal Side, New Haven County

[Title omitted]

Memorandum on Demurrer—Filed September 8, 1938

The demurrers, both general and special in form, are addressed to the five counts of the information.

As to Counts 1 to 4 inclusive, which are based on Sections 6194, 6294, 6066 and 6244, General Statutes, Revision of 1930, respectively, it is claimed that all of these Statutes are unconstitutional. This ground of demurrer is overruled.

By more specific statement the Prosecuting Attorney has by reference made part of the information several books and pamphlets and has also quoted in extenso certain passages therefrom.

It appears that these publications are written and published by persons other than the accused, but have been exhibited or distributed by the accused, and whatever offense, if any, they have committed involves the possession, distribution or exhibition of this printed matter.

It is obvious that the author is strongly prejudiced against what he terms "the Roman Catholic Hierarchy" and that he has little respect for either the Protestant or Jewish faiths. Much that appears in these publications would give offense to devout persons of either of these religious persuasions, if forced upon their attention. Most persons would ignore such emanations as unworthy of serious attention.

I regard them as matters which the author may lawfully write and the accused lawfully possess.

I therefore sustain the demurrers as to the first, second and fourth counts on the general ground that as made more specific they are insufficient in law.

[fol. 16] The demurrer is overruled as to the third and fifth counts.

Under the fifth count it is admissible to prove, if such be the fact, that these writings were forced upon persons whose sensibilities were outraged and who were thus incited or tempted to a breach of the peace. I can comprehend no useful purpose for this writing or publication of such matter, but I am as little willing to declare them unlawful per se as I would be to declare that a Christian may not argue the Divinity of Christ, a Jew deny it and a Confucianist ignore it as a legend. It is not the function of Courts to either coerce or curb thinking or expression, but at most to restrain license of expression as related to time, place and circumstance, all which must be related in the final analysis to the question of potential danger to the established order as represented by the system of government accepted by the people as a whole. I can see little danger to either government or any substantial religion resulting from stupid, bigoted or fanatical attack. It may be, however, that

such matter forced upon the unwilling attention of persons whose sensibilities are thereby offended may arouse relations of such character as to endanger the public peace and thereby fall within the common law conception of unlawful conduct. Wherefore the circumstances of the dissemination of the matter complained of become the sole factually important issue for determination by the ultimate trier, whether Court or jury, they do not fall within the legitimate scope of a demurrer as, being questions of fact, they require evidence for decision.

Pickett, J.

[File endorsement omitted.]

[fol. 17] In Court of Common Pleas, Criminal Side, New Haven County

State of Connecticut

vs.

Russell Cantwell, a minor; Jesse Cantwell, a minor, and Newton Cantwell, all of the Town of Woodbridge, New Haven County, State of Connecticut

Judgment—September 23, 1938

Upon the information of Edwin S. Pickett, Prosecuting Attorney for the Court of Common Pleas, within and for New Haven County, charging said Russell Cantwell, Jesse Cantwell and Newton Cantwell with the crimes of publicly exhibiting or advertising certain offensive, indecent or abusive matter concerning certain persons in the first count of the information, under Section 6194 of the General Statutes; and did by advertisement, ridicule or hold up to contempt certain persons or class of persons, on account of the creed, religion, color, denomination, nationality, or race of such persons or class of persons in the second count of the information, under Section 6066 of the General Statutes; and did solicit money, services, subscriptions or other valuable things for an alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit they were soliciting, without said cause having been approved by the Secretary of the Public Welfare Coun-

cil of this State, in the third count of the information, under Section 6294 of the General Statutes as amended by Section [fol. 18] 860d of the Public Acts of 1937; and did have in their possession, with intent to sell, lend, give, offer or show, certain books, pamphlets, paper or other things containing obscene, indecent or impure language, in the fourth count of the information, under Section 6244 of the General Statutes; and did disturb the public tranquility by certain acts or conduct inciting to violence or tending to provoke or excite others to break the peace, all of which was against the peace and contrary to the Common Law; came to this Court by appeal of the defendants from the City Court of New Haven, to the first Monday of May 1938, when the defendants appeared and filed a Demurrer to the information.

Whereupon the Court (Pickett, J.) on its own suggestion, ordered the State to file a More Specific Statement under said Informations to be filed by July 25, 1938, which Statement was filed as on file, thence by continuance to August 19, 1938, when the defendants filed a Demurrer to the informations as amended;

The Court sustained the demurrers to the first, second and fourth counts of the informations and overruled the demurrers as to the third and fifth counts of the informations on September 7, 1938, as per memorandum on file.

Whereupon said cases came by continuance to the 23rd day of September, 1938, when the defendants appeared and the Court (Devlin, J.), appointed Attorney Otto H. LaMachia, Guardian ad litem for the defendant Jesse Cantwell, aged 16 years, and for the defendant Russell Cantwell, aged 18 years.

The defendants appeared, each charged in a separate information as above set forth and were tried together, after a Plea of Not Guilty by the defendant Newton Cantwell, and a Plea of Not Guilty by the defendants Jesse Cantwell and Russell Cantwell by their Guardian ad Litem, to the third and fifth counts of the informations, and after a full hearing by the Court on the third and fifth counts of the informations were adjudged Guilty on said counts on September 23, 1938.

It is therefore considered by the Court that the accused are each Guilty in manner and form as charged in said informations on the third and fifth counts thereof.

[fol. 19] The Court thereupon sentenced each of said defendants to pay a fine of Five Dollars on each of said third

and fifth counts of said informations and to pay the costs of the prosecution taxed at $55.80 against the defendant Newton Cantwell and $30.01 against each of the other defendants Jesse Cantwell and Russell Cantwell, and each stand committed until judgment is complied with.

By the Court,

Henry C. Higgins, Clerk.

IN COURT OF COMMON PLEAS, CRIMINAL SIDE, NEW HAVEN COUNTY

[Title omitted]

DEFENDANT'S APPEAL—Filed Oct. 21, 1938

In the above entitled case, the defendants appeal from the judgment of said court to the Supreme Court of Errors.

Defendants, by Otto H. LaMacchia and O. R. Moyle, Their Attorneys.

I certify that the foregoing appeal was filed on the 20 day of October, 1938; that the defendants have paid the record fee of the Supreme Court of Errors; and that Joseph Soter is recognized in the sum of One Hundred Fifty ($150.00) Dollars conditioned that the said defendants shall prosecute said appeal to effect and pay all costs therein if they shall fail to do so; and said appeal is hereby allowed.

Henry C. Higgins, Clerk.

[File endorsement omitted.]

[fol. 20] IN COURT OF COMMON PLEAS, CRIMINAL SIDE, NEW HAVEN COUNTY

[Title omitted]

STIPULATION AS TO APPEAL TO THE SUPREME COURT AS TO CONSOLIDATION OF RECORDS IN ABOVE CASE AND PRINTING OF RECORD—Filed October 20, 1938

It is hereby stipulated and agreed between the State of Connecticut and the Attorney for the above accused, that

on the appeal to the Supreme Court of Errors, that one appeal be taken in all three cases and one record printed to consolidate the appeals in said cases and one record fee paid in the interests of the expense to both parties inasmuch as all cases were tried in the Court of Common Pleas as one and tried together as one case against said defendants.

State of Connecticut, by Edwin S. Pickett, Prosecuting Attorney. Jesse L. Cantwell, Russell Cantwell, Newton Cantwell, by Otto H. LaMacchia, Their Attorney.

[File endorsement omitted.]

[Approved, Devlin, J., 10/20/38.]

IN COURT OF COMMON PLEAS, CRIMINAL SIDE, NEW HAVEN COUNTY

[Title omitted]

DRAFT FINDING—October 19, 1938

First

The following facts are found.

[fol. 21] 1. The appellants are members of an organization known as Jehovah's Witnesses.

2. As such members, the appellant visited houses in the line of their duty to preach the word of God.

* * * * * * *

6. The Watch Tower Bible & Tract Society are publishers of books and pamphlets and hand bills.

* * * * * * *

14. Upon leaving the premises, the appellant, Russell Cantwell, left with Mrs. Rigby a pamphlet which she accepted but tore up after the appellant had gone.

15. Mrs. Rigby registered a complaint with the police after the appellant Russell had left because she thought it was the proper thing to do.

* * * * * * *

26. John J. Ganley and John Cafferty were in the corner of Cassius Street when the police officer picked up Russell Cantwell.

27. They learned the nature of the complaint and the reason why the police officer took him into custody.

* * * * * * *

30. Upon obtaining their permission the record entitled "Enemies" was played in its entirety.

31. John Cafferty testified that he had a good idea of what the record contained and that he wanted to hear it to find out for himself.

32. John Cafferty stated that he thought it was a pretty rotten attack on religion.

33. The appellant, Jesse Cantwell, was told to take his phonograph and be on his way.

34. John Ganley stated that he had heard the Catholic religion attacked on other occasions and further stated that he was broad-minded in this regard.

[fol. 22] 35. No remarks were made in the presence of Jesse Cantwell.

* * * * * * *

37. In the City Court of New Haven, when these cases were tried, neither John J. Ganley nor John Cafferty testified against the appellants.

38. John J. Ganley further stated that no attempt to inflict any violence upon the appellant Jesse Cantwell was made.

* * * * * * *

IN COURT OF COMMON PLEAS, NEW HAVEN COUNTY

[Title omitted]

Finding—January 18, 1939

I

The following facts are found:

1. The appellants are Newton Cantwell and his two sons, Jesse Cantwell sixteen years of age and Russell Cantwell eighteen years of age.

2. They are members of a religious organization known as Jehovah's Witnesses and were identified by individual credentials bearing their names and signatures and attesting to the fact that they are ordained ministers to preach the gospel. These credentials were offered in evidence and identified as Exhibit B.

3. As part of their equipment each accused carried with him a bag containing several books and pamphlets written in several different languages, a portable phonograph, and a set of records which when played introduced the books in their possession.

4. Some of the books were called "Enemies", "Riches", "Cure", "Consolation", "Preservation", "Uncovered", and "Who are the Dead", and are identified as Exhibit A. [fol. 23] 5. One phonograph record giving a sales talk on the book "Enemies" was played in Court and was an attack upon the Catholic religion, the proof of which was outlined in the book "Enemies".

6. Excerpts from the books "Enemies", "Cure" and "Riches" containing attacks upon the Catholic religion were read to the Court and were offered as evidence, being identified as Exhibit A.

7. The books and pamphlets carried by the appellants were published by the Watch Tower Bible & Tract Society, a Pennsylvania corporation.

8. The phonographs and records were marked Exhibit C.

9. Their manner of approach would be to ask the prospects if they could play the record and with their permission played the record and the record was a sales talk on the book bearing its name. They would then ask the prospects if they would buy the book, and if not they would accept any contribution they could make. If the prospect was in a position to do this a pamphlet was left on the condition that it would be read.

10. On April 26, 1938, the appellants came to New Haven from their home in Woodbridge, bringing their lunch with them, and from 9 a. m. until the time of their arrest were in the neighborhood of Cassius Street.

11. On April 26, 1938, the appellants in carrying out their work, were on Cassius Street, which is in a thickly settled

neighborhood where about ninety per cent of the residents, some 200 to 300 people, embrace the Catholic religion.

12. On this day as the result of a complaint, Officer Leslie Leigh found Jesse Cantwell coming out of a house in the middle of the block, having in his possession a square black case and a portable phonograph and records, and upon being inquired of by the officer said he was bringing the phonograph into different houses and was preaching the word of God and it was for a religious order.

[fol. 24] 13. On the same day Newton Cantwell was seen coming out of another house with the same paraphernalia in his possession and being inquired of by the officer gave the same information to the officer that Jesse had given.

14. On the same day Officer Carignan found Russell in the middle of the block, with the same equipment, and being inquired of stated he went from house to house canvassing these books and playing the records and if the people gave him money for the books, he accepted it.

15. The mother of the appellants Jesse and Russell was later found seated in the car in the vicinity of Cassius Street, and the car at the time contained a supply of the books and pamphlets.

16. All of the appellants admitted they had not secured a permit from the Public Welfare Council, as required by General Statute 6294 as amended by Section 860d of the Public Acts of 1937.

17. On the day in question and for a long time prior thereto John Cafferty, Anna Rigby, Gladys Barry and Alice Hickey, with their families, resided on Cassius Street and all were of the Catholic religion.

18. John J. Ganley, a Catholic, had been a resident thereon until November 8, 1937, when he married and moved away, but every day he visited his mother on that street and was in front of her house, with John Cafferty, on the day in question.

19. On this day Russell Cantwell called at the home of Anna Rigby, asked to play the record and offered to sell a book known as "Riches". She, knowing of the book before, refused permission as she considered it a pretty strong attack against her religion, and feeling angered

about the matter called up the police station and made a complaint. She testified she was mad enough to hit him if he did not go away.

20. On the same day Russell Cantwell called at the home of Alice Hickey, requesting permission to come in and play [fol. 25] the phonograph and upon her refusal and inability to pay any money for a book left with her a pamphlet known as "Cure". She also saw the other appellants going from house to house with their small bag and carrying a portable phonograph.

21. On the same day Jesse Cantwell stopped John Ganley and John Cafferty on Cassius Street and receiving permission played the record "Enemies". After playing the record he showed them the book "Enemies", stating that if they wanted to contribute toward the organization they could, or if they were firm believers, they could have the book for nothing.

22. On hearing the record Ganley felt like hitting the accused and told him to take his bag and victrola and be on his way. If the accused remained he might have received physical violence.

23. After hearing the record Cafferty's reaction was to throw him off the street physically as the record was an attack upon the Catholic Church and his religion and he warned Jesse Cantwell that he had better get off the street before something happened to him.

24. At the completion of the evidence presented by the State counsel for the appellants moved to dismiss the charges, but this motion was denied by the Court.

25. None of the accused testified at the trial of their case.

26. None of the persons solicited were members of Jehovah's Witnesses.

27. There was no evidence that the appellants became offensive or entered into any arguments upon refusal to contribute for the purchase of the books.

28. None of the witnesses claimed to have any knowledge of the contents of the books submitted in evidence other than what they heard from the phonographic record, ex-

cept Mrs. Anna Rigby, who had read certain parts of the book "Riches".

29. All exhibits are made part of the record and may be used in the Supreme Court without printing.

[fol. 26] II

THE FOLLOWING CONCLUSIONS HAVE BEEN REACHED:

1. That the appellants were guilty of violating Section 6294 of the General Statutes as amended by Section 860d of the Public Acts of 1937.

2. That Section 6294 of the General Statutes as amended by Section 860d of the Public Acts of 1937 is constitutional.

3. That the appellants were guilty of disturbing the public tranquility by certain acts or conduct inciting to violence or tending to provoke or incite others to break the peace.

4. That they were guilty beyond a reasonable doubt.

III

THE FOLLOWING RULINGS WERE MADE AT THE TRIAL:

1. The State produced in chief Henry Carignan as a witness, who upon direct examination was asked the following question:

Q. Do you also recognize in there the basis of operation so to speak that the gentlemen were following as to these books in getting contributions for their society or religion known as Jehovah's Witnesses? Do you recognize that part of the record in which they told their modus of operating?

A. Yes, sir.

Mr. Pickett: In connection with that of course I am going to offer certain excerpts from some of these pamphlets that have been referred to, and I take up first——

Mr. Moyle: May I ask the purpose of the offer?

Mr. Pickett: The purpose is to lead up to the knowledge the community had of what they were doing as advertised by these records, and lead up to the effect it had on persons from whom attempts were made to get contributions by selling or giving away these pamphlets, to show their reaction as bearing out the fifth count or breach of the peace.

Mr. Moyle: May it please the Court, I think that counsel is far off as to that. He can show the reaction by witnesses, [fol. 27] but not by any theory of what might go through their minds because they heard or read something.

Mr. Pickett: I will produce those witnesses.

Mr. Moyle: It is up to him to produce witnesses.

Mr. Pickett: I will do that; good catholics too.

Mr. Moyle: I object to the introduction of the contents for that purpose.

The Court: In other words, you intend to follow up this testimony by testimony of people who heard it?

Mr. Pickett: Yes, and their reaction to it and their knowledge of what this literature contained, and that they were Catholics and what effect it had on them.

Mr. Moyle: That is all right, they can testify but I object to the introduction of this.

Mr. Pickett: Your Honor will notice from the way in which I put this in that the third count about getting contributions for this society without any permit from the Welfare Council of this State, is gradually leading up to the proof I will offer on the fifth count. Of course I have to have it on the record. Your Honor isn't for a minute going to go through all these catalogs or pamphlets or books. I have already been through them and I can save Your Honor a great deal of time by calling attention to what I claim is pertinent.

Mr. Moyle: The fifth count, if I understand it correctly, is the incitement to riot. It is up to the State to prove that there was a riot incited or brought about or instigated or incited to riotous conduct, and not because the book contained something. The law is established by the decision, which says that it is perfectly lawful for the author of these books to write, possess and distribute them, and so on.

The Court: I don't think there is any question about that, but your statement that the fifth count provides for excitement to riot is not strictly correct. The fifth count reads "* * * certain acts or conduct inciting to violence or tending to provoke or excite others * * *"

Mr. Moyle: Yes, it isn't the contents of the book. The [fol. 28] proposition is rather that people were incited to violence or action of that kind.

The Court: I will admit it subject to its being connected up by further witnesses.

Mr. Moyle: We ask for an exception.
The Court: An exception may be noted.

2. At the conclusion of the State's case the appellants by their attorney moved that the evidence offered by the plaintiff, being excerpts from the books and pamphlets entitled "Enemies", "Riches", "Cure" and "Preservation" be stricken as recited as follows:

Mr. Moyle: May it please the Court, I should like to make a motion at this time that the various citations from these books, which were read into the record by our friend, be dismissed or stricken out. The understanding was that they would be taken subject to connection, that is, if he connected them up with acts of violence or incitement to violence under the complaint. There is nothing here whatsoever. All there is is the testimony that these books were presented. I ask that that testimony be stricken from the record as being prejudicial, incompetent, immaterial and irrelevant.

Mr. Pickett: I haven't anything to say. I claim that I did all that I promised.

The Court: What is your claim as to how this ties up?

Mr. Pickett: How I connected them up? The claim in this matter doesn't go to the phonograph records at all. They are in. I claim that the inferences from the record that was played to Your Honor in which the book "Enemies" is mentioned and offered for sale, connect up with what "Enemies" says in regard to the Catholic religion. In other words, it is all part of a great whole. The phonograph record, the book "Enemies" and the offering of that book and its contents all connects and dovetails with the entire evidence, and I claim that I have fulfilled every promise I made to connect up the contents of the book with the phonographic record and their offer to these people. Also the book "Riches" was offered.

[fol. 29] The Court: You are referring to just the two books, "Riches" and "Enemies"?

Mr. Pickett: Yes, and "Preservation" and of course the pamphlet "Cure" comes in it too. There was nothing in the book "Preservation" but a picture; there wasn't any reading matter brought out as to this purple colored book called "Preservation"; so far as that is concerned it can go out; but as far as the pamphlet "Cure" and the books "Enemies" and "Riches" are concerned, their contents are per-

tinent to the whole matter in connection with this phonographic record.

The Court: I will allow the matter to stand.
Mr. Moyle: We ask for an exception, Your Honor.
The Court: Exception may be noted.

IV

THE APPELLANTS MADE THE FOLLOWING CLAIMS OF LAW:

1. That on April 26, 1938, the appellants Jesse Cantwell, Russell Cantwell and Newton Cantwell were on Cassius Street, in the City of New Haven, endeavoring to sell literature they had in their possession and carrying on their work in a peaceful manner and in no way to incite any person or persons to acts of violence, or intending to incite or invoke any person to break the peace.

2. That the appellants were distributing books and booklets which were published by a printing concern, and did not seek the solicitation of any service or subscriptions for some religious, charitable or philanthrophic cause without such cause having been approved by the Secretary of the Public Welfare Council.

3. That Section 6294 of Connecticut Statutes as applied to the acts of the appellants is invalid under Article I, Sections 3, 5 and 6 of the Connecticut Constitution, in that as applied it unduly restricts and denies freedom of speech, freedom of press and freedom of religious profession and worship of the appellants.

[fol. 30] 4. That the introduction of evidence of excerpts from the books and pamphlets were prejudicial, immaterial, irrelevant and incompetent and that there was no foundation laid for the introduction of the same.

5. That the State has failed to establish upon all the evidence that the accused were guilty beyond a reasonable doubt.

Notwithstanding these claims the Court rendered judgment as on file.

Devlin, Judge.

IN COURT OF COMMON PLEAS, NEW HAVEN COUNTY

[Title omitted]

CORRECTED FINDING—Filed January 24, 1939

Section 4 relating to the claims of law made by the appellant is amended by substituting the following in place of paragraph 3:

3. That Section 6294 of the General Statutes as applied to the acts of the defendants is contrary to Article I, Sections 3, 5 and 6 of the Connecticut Constitution and of the due process clause of the Fourteenth Amendment to the United States Constitution in that as applied it unduly restricts and denies freedom of speech, freedom of press and freedom of religious profession and worship.

Devlin, Judge.

[File endorsement omitted.]

IN COURT OF COMMON PLEAS, CRIMINAL SESSION, NEW HAVEN COUNTY

[Title omitted]

ASSIGNMENT OF ERRORS—Filed January 27, 1939

The Court erred:

1. In refusing to find the material facts set forth in paragraphs 1, 2, 6, 14, 15, 26, 27, 30, 31, 32, 33, 34, 35, 37 and [fol. 31] 38 of the Draft Finding, which were admitted or undisputed facts.

2. In finding that "they were members of a religious organization" being part of paragraph 2 of the Finding without evidence.

3. In finding that "it was for a religious order" being a part of paragraph 12 of the Finding without evidence.

4. In finding that "she testified she was mad enough to hit him if he did not go away" being a part of paragraph 19 of the Finding without evidence.

5. In finding that "on hearing the record, Ganley felt like hitting the accused" being a part of paragraph 22 of the Finding without evidence.

6. In finding that "after hearing the record, Cafferty's reaction was to throw him off the street physically" being part of paragraph 23 of the Finding without evidence.

7. In finding the conclusions in paragraph 1 to 4 inclusive of Part II of the Finding when the facts set forth in the Finding do not support them.

8. In overruling the claims of law stated in paragraph 1, 2, 4, and 5, of Part IV, of the Finding and paragraph #3 of Section IV, as filed in the Corrected Finding.

9. In admitting into the evidence excerpts of books entitled "Enemies", "Riches", "Cure", and "Preservation", as stated in paragraph I of Section III of the Finding.

10. In finding upon all the evidence that the defendants were guilty of the crime charged beyond a reasonable doubt.

The Defendants, by Otto R. LaMacchia, and Olin R. Moyle, of New York, Their Attorneys.

[File endorsement omitted.]

[fol. 32] In Court of Common Pleas, New Haven County

[Title omitted]

Statement of Evidence—September 23, 1938

Appearances:

For the Plaintiff: Edwin S. Pickett, Prosecuting Attorney.

For the Defendants: Otto H. LaMacchia, Esq., Olin R. Moyle, Esq.

Hon. Raymond J. Devlin, Judge

All the Evidence and Rulings Certified by the Court

Colloquy

Mr. Pickett: How old are you, Jesse?
The defendant Jesse Cantwell: Sixteen.
Mr. Pickett: Originally Mr. Gamer was appointed guardian.

Is your Honor acquainted with the attorneys? Mr. LaMacchia, you will have to introduce Mr. Moyle to his Honor and ask his permission to allow him to appear.

Mr. LaMacchia: At the last appearance I introduced Mr. Moyle to the court before Judge Pickett.

The Court: You will be appointed guardian ad litem with respect to the accused who are under twenty-one.

Mr. Pickett: Then, he is appointed guardian ad litem for Jesse.

How old are you, Russell?

The defendant Russell Cantwell: Eighteen.

Mr. Pickett: Will your Honor do the same in this case?

The Court: The same appointment.

Mr. Pickett: Mr. Newton Cantwell, you are the father of these two boys, are you not?

[fol. 33] The defendant Newton Cantwell: Yes, sir.

Mr. Pickett: If your Honor wants the statute that they are charged under, it is 6294 if I remember rightly. It is the third count of the information and the fifth count.

Do you want the information read, or will you just enter a plea?

Mr. Moyle: We will waive the reading of the information and enter a plea of not guilty.

Mr. Pickett: Mr. LaMacchia, you will have to enter a plea for these two young men.

Mr. LaMacchia: I enter a plea of not guilty as to the two counts.

Leslie Leigh, called as a witness in behalf of the State, being first duly sworn by Mr. Higgins, testified as follows:

Direct examination.

By Mr. Pickett:

Q. Your name is Leslie Leigh?
A. Yes, sir.
Q. Your residence is in New Haven?
A. 115 West Elm Street.
Q. You are a police officer of the City of New Haven?
A. Yes, sir.
Q. And were on April 26 of this year?
A. Yes, sir.

Q. At what station were you doing police duty on April 26?

A. Station No. 3.

Q. That is on Howard Avenue?

A. Yes, sir.

Q. What hours were you working?

A. From four in the afternoon until midnight.

Q. Were you doing mounted or foot duty?

A. On mounted duty.

Q. Motorcycle, I take it?

A. Yes.

Q. Was Cassius Street on the beat that you were covering in the course of your police duties?

A. Yes, it was.

Q. Now, on the afternoon of April 26 of this year was your attention called to any incidents that were happening on Cassius Street?

A. Yes, it was.

Q. You can't tell who said anything to you, but in consequence of information received did you go to Cassius Street?

A. Yes, I did.

Q. About what time?

A. It was between 4 and 4:15 in the afternoon.

Q. Well, Cassius Street is a comparatively short street—only one block long?

A. It is only one block long.

Q. When you went on to Cassius Street did you see any one of the accused seated here?

[fol. 34] A. Yes, I did.

Q. Which one did you see?

A. That young chap on the extreme right (pointing).

Q. The last one from you?

A. Yes.

Mr. Pickett: For the record, that is Jesse Cantwell.

Q. When you got to Cassius Street where did you find Jesse?

A. He was just coming out of a house.

Q. Approximately where?

A. Approximately the middle of the block. I don't know the number of the house.

Q. Did he have anything with him?

A. Yes, he had a black square case, and he told me it was a portable phonograph.

Q. I take it that you stopped him and talked with him?

A. Yes, I did.

Q. Go ahead and tell us what you said.

A. I asked him what he was doing there, and he said that he was bringing those phonographs into different houses, and he said he was preaching the word of God. I asked him who he was working for—who he was doing it for and he said, to my recollection—he mentioned some religious order.

Q. Would you know the name if you heard it?

A. No, I wouldn't. I don't quite recall it.

Q. All right. Well, did you see him go into any other place than the one you saw him come out of?

A. No, just this one house.

Q. After you had a talk with him did you detain him at all?

A. Well, he did stay with me for a couple of minutes until a radio car came up, and he was taken into the radio car by a couple of officers and brought to the station.

Q. Who were the officers in the radio car?

A. One was Officer Wendland and Officer Carignan.

—. Carignan is here, is he not?

A. Yes.

Q. Officer Wendland is dead?

A. Yes.

Q. He was shot shortly after that?

A. Yes, sir.

Q. To shorten this up a little bit: You turned Jesse Cantwell over to the custody of Officer Carignan?

A. Yes, I did.

Q. Then what did you do?

A. I was going down on my motorcycle and some lady in the block drew my attention to a woman who had left one of the other houses on Cassius Street and walked around the corner and got into a parked automobile on Cedar Street. She said that this woman——

Mr. Moyle: Just a minute.

[fol. 35] By Mr. Pickett:

Q. You can't tell what she said, but in consequence of what that person said to you, did you go to Cedar Street, where this automobile was?

A. Yes, sir.

Q. Was the lady in the auto?

A. Yes, she was.

Q. Would you know the lady? Do you see her here?

Mr. Pickett: Mrs. Cantwell, stand up.

Mr. Moyle: We object to that unless we know the purpose of it. She isn't a defendant here.

Mr. Pickett: No, no, this is part of the res gestae.

Is Mrs. Cantwell here, the lady who was in the auto?

(A woman rose.)

By Mr. Pickett:

Q. Does that look like the woman?

A. Yes.

Mr. Pickett: You can sit down. This is purely for identification.

Q. Did you notice where there was anything in the auto besides the woman?

A. Yes, she had quite a lot of pamphlets in the back seat.

Q. Now if you spoke to this woman and she said anything or you said anything, you can't tell it unless some of these three men were there, and I take it that they were not there?

A. No they were not there.

Q. Now, what did you do after that?

A. I called up and had the radio car come over again, and they brought this woman into the station.

Q. Who?

A. They brought this lady into the station.

Q. Yes?

A. I went down on Cassius Street again towards Howard Avenue and I saw another man coming out of a house. He had the same paraphernalia with him.

Q. Was he young or old?

A. He was an oldish man.

Q. Do you recognize any of these three as being the one you are speaking about?

A. Yes, the gentleman sitting in the center.

Q. We can call him Newton. Newton Cantwell?

A. Yes.

Q. He had this same paraphernalia?

A. Yes.

Q. Did you have a talk with him?

A. I asked the same questions and he gave me the same answers, that he was preaching the word of God.

[fol. 36] Q. Did you see the third one, Russell? He is the one nearest to you. Did you see him at any time?

A. Only in the station.

Q. In the station?

A. Yes, sir.

Q. In other words, you had Jesse, the youngest one, sent into the station by this radio car?

A. Yes.

Q. And then afterward you found Newton?

A. Yes.

Q. The oldish one. Did you take or have him sent in?

A. No, he was sent in also.

Q. Now, the next time you saw Russell was at the police station?

A. Yes, sir.

Q. Howard Avenue Station, I take it?

A. Yes, sir.

Q. So that all three were present?

A. Yes, sir.

Q. Was the paraphernalia also in the police station?

A. Yes, it was.

Q. Did you afterward go with these three to the City Attorney's office?

A. No, sir.

Q. You stayed in your district?

A. Yes.

Q. Did you stay in the Howard Avenue Station while there was any conversation between these three accused and other officers?

A. No, sir.

Q. You went in there and then went about your business, I take it?

A. Yes, sir.

Mr. Pickett: You can inquire.

Cross-examination.

By Mr. Moyle:

Q. Then, Officer, all you know concerning the two defendants that you arrested is that you saw them, that they had some of this literature and a phonograph with them, and that you arrested them?

A. I didn't arrest them, sir.

Q. You were present when they were taken in?
A. I was present when the other policemen arrested them.
Q. You don't know of your own knowledge what they were doing at any of the houses?
A. No, sir.
Q. You don't know whether they were calling house to house?
A. No.

Mr. Moyle: That is all.
Mr. Pickett: That is all.

HENRY CARIGNAN, called as a witness in behalf of the State, being first duly sworn by Mr. Higgins, testified as follows:

Direct examination.

By Mr. Pickett:

Q. Your residence is in New Haven?
A. 312 Greenwich Avenue.
Q. You are a police officer of the City of New Haven?
[fol. 37] A. Yes, sir.
Q. And were on April 26 of this year?
A. Yes.
Q. You were a police officer?
A. Yes, sir.
Q. Were you doing police duty in the Howard Avenue Station on that day?
A. Yes.
Q. April 26 was on a Tuesday, according to the calendar. What kind of duty were you doing?
A. I was doing police duty.
Q. Naturally, but I mean whether you were walking or riding.
A. Walking.
Q. You were working what hours?
A. Four to twelve.
Q. Did you have Cassius Street on your beat?
A. Yes, sir.
Q. During the course of your duties did you go to Cassius Street?

A. Yes, sir.

Q. Did you see Officer Leigh there?

A. Yes, sir.

Q. Did he have any one with him at the time?

A. Yes, sir.

Q. Well, we don't need to spend any time on that. He said the youngest one, the one on the end.

A. Russell we picked up on Cassius Street.

Q. It was Russell?

A. Russell.

Q. Where did you find him?

A. I found him in the middle of the block.

Q. Did he have anything with him?

A. Yes, sir, he had one of those little black suitcases and one of those handbags with books in.

Q. Well, we have you on Cassius Street and have you started on Russell. Go ahead and tell us the course of events that occurred.

A. I and Officer Wendland were sent to Cassius Street, and we picked up Russell and we took him in the radio car.

Q. A little louder.

A. We took him in the radio car with his suitcase and little handbag. We brought him in the station and we asked him questions.

Q. You can tell what you said and what he said.

A. So we asked him what he was doing, and he said he goes from house to house canvassing these books and he plays that record, and that record is kind of a sales talk on that book, and if the people wants to take a book he leaves a book in the house, and if the people wants to give him ten or fifteen or twenty-five cents for one of the books, he will accept it; so we brought him—Then Officer Gilroy and the sergeant started to look over the books and looked over some paragraphs and marked them off. Then we decided to take them down — the City Attorney's, so we took Russell——

Q. Before you got down there: Did you see the other [fol. 38] two at all?

A. No. I went down and then we got a telephone call and I went back in the radio car again, and we picked up this car on Cedar Street and Mrs. Cantwell was sitting in the car and Newton Cantwell was there, so I rode over to the station with the two of them.

Q. Who?
A. Newton, the father.
Q. Yes?
A. So we brought the two in the station.
Q. What was in the car?
A. Books and pamphlets in there.
Q. Similar to the ones that Russell had?
A. Yes, sir.
Q. How large a quantity was in that car?
A. Well, I should judge it must have been five or six books and it must have been forty or fifty little pamphlets in the car.
Q. Then you brought Mr. and Mrs. Cantwell into the station?
A. Yes.
Q. How about Jesse?
A. Jesse? We didn't have Jesse. After we came back from the City Attorney's office Jesse was in the station.
Q. All right. You got Russell first and then you picked up Newton Cantwell and his wife?
A. Yes.
Q. And brought them in, and then you went to the City Attorney's office with all three?
A. Yes, sir, Mrs. Cantwell and Mr. Cantwell and Russell.
Q. Three of them?
A. Yes, sir.
Q. Where did you come across Jesse?
A. After we came back he was in the station.
Q. When you came back Jesse was there?
A. Yes.
Q. So now we have all four of them in the Howard Avenue Station at one time?
A. Yes, after we came back from the City Attorney's office, Jesse was there.
Q. We will take what happened in the station first. Was there any talk with them aside from the talk that you have related as to what Russell said?
A. The only one we talked to was Russell.
Q. You talked in the City Attorney's office?
A. Yes.
Q. They talked in the City Attorney's office in your presence as to what they were doing?
A. Yes.

Q. We will take up that for the moment. Tell us what the talk was at the time when you were at the City Attorney's office with the four of them, including Mrs. Cantwell.

A. The talk was—We told them the same thing, how we picked them up on Cassius Street and brought them in the station and asked them a few questions about going house to house with these books and playing the record and about [fol. 39] accepting an offer of ten or fifteen cents, a quarter, or more, and then Officer Gilroy and the sergeant they marked off paragraphs in the book. So he showed it to Mr. Maresca and he read it and further on he read it and he looked up his law book, and from there he asked if they had a permit from the Public Welfare Council, and they said "No."

Q. None of them had such permit?

A. No, they didn't have no permit.

Q. Would you know any of the books from the outside if you saw them?

A. Yes, sir.

Q. I don't suppose you read them?

A. No, I just glanced it over.

Q. Are you Catholic?

A. Yes, sir.

Q. You talked about bags. Here are three bags, seemingly all the same. Is this one similar to the bags that each one of them was carrying (indicating)?

A. There was one book Riches and Enemies.

Q. Ricchezza?

A. That is Italian. They had three books, Italian, Polish, and English.

Q. We will get all the packages out. You can look these over and see what you recognize.

A. I had an English book.

Q. We have plenty of them. Did you see anything like that (handing a book to the witness)?

A. Yes.

Q. Enemies?

A. And one like that (indicating).

Q. Riches? Did you notice any of these pamphlets?

A. Yes.

Q. Did you see any one like that (indicating)?

A. Yes.

Mr. Pickett: We offer these bags and their contents as one exhibit, A.

Mr. Moyle: For what purpose are they offered?

Mr. Pickett: To show what they had with them there, as bearing out their statement as to what they were doing.

Mr. Moyle: We have no objection. I think that you ought to identify the books separately.

Mr. Pickett: They will be well identified before we get through. We have to get them in first.

Mr. Moyle: There will be no objections.

Mr. Pickett: All right, three handbags and contents, including books and pamphlets. The books are as follows: a book bound in red with the title Riches. What do you call this color (indicating)?

[fol. 40] Mr. Moyle: Tan, isn't it?

Mr. Pickett: That is good enough. A book bound in tan called Enemies, a copy of the Holy Bible, and another book bound in red and written in Italian, called Ricchezza. I think we had to take one out in order to file it in court when I was asked for a more specific statement.

By Mr. Pickett:

Q. Did you see a book like this, bound in purple, called Preservation?

A. No, I don't remember that one.

Mr. Pickett: As a matter of fact, you don't dispute that they had between the three of them this book Preservation?

Mr. Moyle: No, we don't question that.

Mr. Pickett: A book bound with a purple cover, called Preservation, a pamphlet called Cure, two copies of a pamphlet called Consolation. We will now take another pamphlet written in Italian, called Governo, a pamphlet written in Polish and another one written in Polish, called Rzad.

By Mr. Pickett:

Q. A large number of these pamphlets were called Cure, were they not?

A. Yes, sir.

Mr. Pickett: There is another one here written in German, as I look at it, another one written in Italian, called Scoperti, and another one written in Polish, which I won't attempt to translate.

What is this? Greek, Mr. Moyle (handing a book)?

Mr. Moyle: That is Russian.

Mr. Pickett: Another one written in Russian. I don't know what it says. What language is this, Mr. Moyle (handing a book)?

Mr. Moyle: Swedish.

Mr. Pickett: Another one written in Swedish. I think this one is Hebrew. Am I right?

Mr. Moyle: That is Greek.

Mr. Pickett: I stand corrected. Another pamphlet written in Greek. What is this one (handing a book)?

[fol. 41] Mr. Moyle: Armenian.

Mr. Pickett: One written in Polish and one written in Armenian. What language is this (handing a book)?

Mr. Moyle: That is Greek.

Mr. Pickett: All right, a couple of pamphlets written in Greek.

Mr. Moyle: That one is English.

Mr. Pickett: Yes, I can read that.

The inside has a statement of all these languages. It is a form of introduction. Here is the English one and the others are all the same only in different languages. You might call it a sort of catalog.

Mr. Moyle: No, not a catalog. I would call it a testimony book.

Mr. Pickett: All right, a testimony book. That is good enough for me; a testimony book with the names of the various languages. It contains subject matter. The book is entitled The Kingdom Message in Your Language.

This looks like some radio program (indicating).

Mr. Moyle: It is a circular advertising a radio lecture.

Mr. Pickett: Written in Italian and other languages.

Mr. Moyle: Yes, that is Italian.

Mr. Pickett: An announcement of a radio program in various languages.

Mr. Moyle: That is a catalog (indicating).

Mr. Pickett: This is a catalog of the Watch Tower Society. I am still wandering around in the dark. What is this?

Mr. Moyle: That is Ukranian.

Mr. Pickett: Ukranian and Lithuanian. I won't ask you to put it down, Mr. Kapleau, because I know you can't read it. Have we mentioned this one called Uncovered?

Mr. Moyle: You had that in Italian.

Mr. Pickett: This is in English. We didn't have it in English. An English-written pamphlet called Uncovered.

[fol. 42] By Mr. Pickett:

Q. In connection with what they had did you see anything like this (handing a pamphlet to the witness)?

A. Each one had one of these in some part of this case; they are in this pocket.

Q. Well, it was in this case; it doesn't make any difference.

A. Yes, in here (indicating on a bag).

Mr. Pickett: Here is another one by Mr. Rutherford. It also was in the package. It is marked Enemies, but evidently is of a different issue, because it is printed in different ink. Here is a Russian one, a pamphlet in Armenian —the name I won't attempt to say—and another one written in English, entitled Where Are The Dead.

Q. Have we been through everything, Mr. Carignan?

A. Yes.

Mr. Pickett: Oh, the credentials. Have you any objection to them?

Mr. Moyle: None at all.

Mr. Pickett: This one had an addition. This is what you might term "credential."

Mr. Moyle: Yes, a credential and testimony.

Mr. Pickett: I am going to make a separate exhibit of it, B. All of these other items have been marked "Exhibit A" and also have already been marked an exhibit in connection with the more specific statement. Now I make these credentials, one for each accused, exhibit B.

(The papers referred to were received in evidence and marked "State's exhibit B.")

The Court: Credential and testimony card?

Mr. Pickett: I will come to that as I explain it. This is what he means by testimony, what is on the back of the credential.

The Court: All right.

Mr. Pickett: And this is something that was in one of these cards (handing to the Court). I will read it into the record. It is same for all three. You don't have to take it down, Mr. Kapleau.

(The card was read.)

[fol. 43] This one is signed "R. D. Cantwell, Bradley Highlands, Woodbridge, New Haven, Connecticut," the other one "J. L. Cantwell," and the other one "N. D. Cantwell."

On the reverse side of these credentials there is this:

(The card was read.)

By Mr. Pickett:

Q. Are you familiar with this instrument, the phonograph?

A. I think I started one once.

Q. It has been already testified that each one had a phonograph in each one of these packages, has it not?

A. Yes.

Mr. Pickett: I will open this and play it for the benefit of your Honor and not for the audience.

The Court: Put it on the table.

(The phonograph was placed on a table.)

Mr. LaMacchia: Do you intend to play the record?

Mr. Pickett: Yes.

Mr. LaMacchia: What is the purpose of it?

Mr. Pickett: To show the introduction or sales talk that the gentleman said was the procedure they followed.

I am going to play a record entitled Enemies. Wind up the machine, Mr. Carignan.

(The record was played on the phonograph, and is as follows:)

"The publishers now exhibit to the people the book entitled Enemies. The purpose is to enable all persons who love peace and righteousness to learn how they may find protection and safety.

"Fear and dread now afflict almost all persons. There is a real reason. To know the reason and to learn how one may gain peace and joy are of very great importance.

"The perfect word of God is the authority upon which the book Enemies is based. Therein is found the proof that the greatest enemy of man is invisible to human eyes, and which is Satan the deceiver. His purpose is to entrap men and lead them into destruction. A host of wicked angels operate [fol. 44] with him, and he also uses selfish and ambitious men to accomplish his wicked purpose. He has deceived and

overreached the rulers, made them unjust and cruel, and for centuries the result to the people has been much suffering and distress.

"The most seductive and subtle instrument employed to deceive man is religion, because religion has the appearance of doing good, whereas it brings upon the people great evil. There are many different religions, all of which are deceptive, are the instruments of the enemy Satan, and all work to the injury of men.

"This book submits the conclusive proof that for more than fifteen hundred years a great religious system, operating out of Rome, has by means of fraud and deception brought untold sorrow and suffering upon the people. It operates the greatest racket ever employed amongst men and robs the people of their money and destroys their peace of mind and freedom of action. That religious system is vigorously pushing its political schemes amongst all the nations of earth, with the avowed purpose of seizing control of the nations and ruling the people by cruel dictators. Some of the nations have fallen under that wicked power, and all nations are now greatly endangered. Because of the increasing power of the enemy the liberties of the people are rapidly passing away and all nations are rushing into infidelity and into ultimate destruction.

"All thoughtful persons realize that the people now face the greatest crisis yet known. Enemies of man are everywhere, and no uninformed man feels safe and secure. Where and how can the people find protection from such enemies? Some power far greater than that of Satan and his allies must intervene in behalf of the people if they find and receive protection from their enemies. There is no human power that can protect man, and this all thoughtful persons must admit. The matter is of too great importance to pass it by without consideration. The Almighty God in his goodness has made it possible for every person to now get the greatly needed information.

"The book Enemies submits for your instruction the cor- [fol. 45] rect answer to the questions and the complete proof in support thereof, and which proof is indisputable and will satisfy every reasonable mind. It discloses who are the real friends of honest men and what men must do to find security and life. For the protection of yourself and your children a knowledge and understanding of the contents of that book is absolutely necessary. It is now being carried to the people

by those who love God and who have the interest of honest persons fully at heart. The publishers are not selling the book, but they do receive a small contribution for each book, which will be used for printing more books to aid the people. Persons who are too poor to contribute will receive the book free upon condition that they study it carefully. To learn the contents of this book will greatly benefit you and enable you to do good to others and to honor your creator.

"Because the book Enemies makes known the truth, you will find that the clergymen of all religious organizations will oppose it and try to prevent you from learning its contents. Such opposers are your enemies. Ignore them and keep in mind the word of Almighty God wherein it is written, 'Study to show thyself approved unto God. A knowledge of His word is your shield.'"

By Mr. Pickett:

Q. You have heard that record before?

A. Yes, sir.

Q. There are certain references in that record that I will not repeat and probably couldn't repeat verbatim, are there not?

A. Yes.

Q. Do you recognize that part of it——

A. Yes, sir.

Q. (Continuing:) and what followed and preceded the reference I spoke about? Do you recognize what religion was referred to in that?

A. Jewish.

Q. And what other?

A. And Catholic.

* * * * * * * *

Mr. Pickett: The pamphlet I will now read from is Cure, on page 6.

The Court: Put it all in the record.

Mr. Pickett: I will read it slowly. This is page 6, about the twelfth line from the bottom of the page:

[fol. 46] "After the death of the apostles of Jesus Christ the Catholic religion came into existence, and the leaders therein immediately engaged in politics and have practised politics and have prosecuted and carried on wars of conquest from then even to this very day. The record of that religious organization is written in human blood and tears

of bitterness. Fraudulently and hypocritically operating in the name of God and of Christ, the Catholic religious organization has continually carried on a campaign of intolerance toward and persecution of all persons who have tried to understand the Bible and teach its truth to others. The cruel Inquisition of that religious organization has left its slimy trail in almost every land on earth. It has ever been known as an unclean thing, for the reason that many of its leaders and priests have been and are morally putrid. The organization is ruled by a few men who maintain headquarters at Vatican City, Rome, and which small body of rulers is known as "The Roman Catholic Hierarchy of Authority."

And on page 8 of the same pamphlet:

"The Roman Catholic religious organization, operated by the Hierarchy, is the greatest scheme that has ever been operated to keep the people in ignorance of the truth."

Here is another paragraph:

"Years ago certain sincere persons organized what is known as Protestantism, which then was a protest against the false teachings and practices of the Roman Catholic religion. Soon thereafter, however, the so-called Protestant organization indulged in practices like unto those employed by the Catholic religion. The record of Protestantism also is that of inquisition, persecution of the true followers of Christ Jesus, and prosecution of cruel wars of conquest, dabbling in the political affairs of the nations, and of teaching and practicing false doctrines that are defamatory of the name of Jehovah God and of Christ Jesus. The original Protestantism is dead. The modern Protestant organization is but a side-show to the Roman Catholic Hierarchy. Its leaders are ignorant of God's organization, have sub- [fol. 47] stituted man-made theories and practices for the word of God, and have turned millions of professed Protestants into ignorance and superstition."

I quote now from page 9:

Mr. Moyle: May it please the Court, I want it understood that all this is objected to.

Mr. Pickett: Loudly objected to.

Mr. Moyle: And exception.

Mr. Pickett: On page 9 under the subdivision "A Racket!":

"The practice of religion has proved beyond all doubt that it is a racket of the very worst kind. It operates in the name of God and takes advantage of the people's reverence and awe toward the Supreme Being and of their fears of the future after death, and thus forces upon the people belief in unreasonable, false, and harmful doctrines, such as purgatory, eternal torment, divine right of kings, and like doctrines. By false doctrines the religious leaders wrongfully extract large sums of money from the rich and the poor, by falsely representing to the living that their beloved dead are in a place called purgatory, there consciously enduring torture. Upon the false representation that the clergy can say prayers in behalf of the dead that will shorten their duration of suffering in purgatory, the living are induced to hand over large sums of money, upon which ill-got gains the priestly leaders of the religious systems live wantonly. They well know that there is no such place in existence as purgatory. The practice of their religion therefore enables them to obtain money under false pretenses."

And again on page 10. It is a continuation of page 9 under the subdivision "A Racket":

"The religious leaders claim that the clergy are superior to the common people, and that the clergy are therefore entitled to freely receive the best of material things, which must be handed over to them by others. By this means, in addition to robbing the people as aforesaid, they induce the people to build for the religionists large and costly edifices, in which the favored ones carry on their religious [fol. 48] practices and reside and indulge their beastly appetites, making their belly their god. (Philippians 3: 19.) When a poor man dies his widow is not permitted to carry his body into such a religious edifice for a funeral service unless she contributes a specified sum of money therefor. The practice of these false religions robs the people from the cradle to the grave. They claim authority to perform marriages and extract money for that; claim authority to bestow blessings or curses upon the birth of the children, and obtain money for that; claim authority to provide special benefits at funerals, and wrongfully obtain money for

that; and then claim that they can get the dead out of a place where they are not, and fraudulently obtain money for that. Never was there such a racket practiced among human creatures as that practiced by religious leaders. Religion therefore hold- out no hope for the people * * *"

And to continue along on page 17 under the caption "Against God":

The ambition of the Roman Catholic Hierarchy is to control the nations of the earth. For that reason that religious organization has for many years maintained the Jesuit organization, which is a secret religious order, the work of which is to originate and operate schemes to deceive the people, gain control of them, and to grab political power and wealth. Carrying out its purpose, the religionists organized Fascism and by that means grabbed control of Italy, and then quickly announced its full agreement with the Roman Catholic Hierarchy. Shortly thereafter Fascism, under the name of Naziism, was organized in Germany by the same class of religionists. The religionists had put forward Communism and used that as a scarecrow to frighten the people into submission, and which enabled the religionists, Fascists, or Nazis to grab control of Germany, which is now ruled by a dictator. Fascism and Naziism and Roman Catholicism, meaning one and the same thing under three names, operate constantly to persecute the witnesses of Jehovah, the true followers of Jesus Christ, which witnesses of Jehovah seek only to inform the people of God's gracious provision to cure their ills.

[fol. 49] "Now the Roman Catholic Hierarchy has made an alliance with Japan, which people practice another religion, and the Vatican now backs up and supports Japan in her desperate attempt to grab China and control it. The Roman Catholic religionists now call for a 'united religions front,' in which it, the Roman Catholic Hierarchy, is always in the lead and its purpose is to grab control. The Protestants and Jews fall upon the necks of the Roman Catholic Hierarchy and all move along together, claiming that religion is the means of salvation of the people and the nations. To be sure, there are millions of sincere persons held under these religious organizations who have been deceived and who do not understand that religion is a racket and a subtle enemy of the people. These sincere persons

must be informed that they may have a chance to seek deliverance.

"Religionists, led by the Roman Catholic Hierarchy, have now launched and vigorously prosecute a campaign looking to the control of all the nations of the earth and the rule of all the nations by dictators. Their unholy ambition has been accomplished in several European nations. When Germany was taken over by a dictator they immediately began a cruel persecution of all persons who studied the word of God and who attempted to instruct others concerning God's kingdom. The same course of action is being taken amongst practically all the peoples and nations of the earth.

"The following is an example of the operation of the religious political schemers working together, to wit: The head of a large financial institution, who is a Roman Catholic, attended a conference at Washington, D. C., and thereafter said to the board of directors of his financial institution: 'We must arrange our company to suit the following conditions and plans in the United States. There will be an inflation of the currency, then a revolution, and then a dictator to rule.' The people see now this movement being carried forward to accomplish that very thing. Already there has been an inflation of the currency and an orgy of spending and much preparation for a dictator to take charge of [fol. 50] the national affairs. The government of the United States is now so much in debt that in all probability it will follow the example of Germany by canceling the present money issue when a dictator takes control. Then all the liberties of the people will be at an end, and the fanatical religionists will dominate the thoughts and actions of the people. It is reported on good authority that in many of the Roman Catholic cathedrals in America boxes that have the appearance of piano boxes are moved into basements of these organizations and are filled with guns and ammunition. Such is the course of religionists. The people can never hope to receive a lasting cure or help from religionists."

That is from Cure. I will now take up the book Riches, quoting from that book on page 79:

"Today the so-called organized Christianity, in which the Roman Catholic Hierarchy and its priests take the lead, entirely disregards the commandments of the Lord and at-

tempts to eat and drink at His table, while at the same time they partake of the Devil's table by making their organization a part of Satan's world."

On page 157 of the same book there is an illustration of a naked woman, with a caption reading, "Lucifer Raises the Issue Concerning Man."

And again on page 196:

"Out of that ingenious lie of Satan has developed and been built up the Hierarchy of the Catholic church. Out of that lie of Satan the title 'Pope,' which means 'papa,' has come. It is a title given to the man who is head of the religious-political organization, the Roman Catholic Hierarchy."

And again on page 232 of the same book:

"Since the time the Roman Catholic organization started in the pope business and began to have popes, a vacancy occurs from time to time, and such vacancy in that office is filled by the vote of the college of cardinals, by voting into office one of their own number. Men without any authority whatsoever from God or Christ Jesus formed and continue [fol. 51] to operate the Roman Catholic system or organization. The father of that organization is Satan the Devil. It is the fruit of the Devil's successful scheme to defraud men and reproach God, and by that organization the Devil has succeeded in blinding millions of honest persons who have been drawn to the Roman Catholic organization, and who have been induced to believe that such organization is a servant of Christ, when in fact that organization serves and supports the Devil. Good people who have supported the organization have unwittingly been serving and supporting the Devil's servants. The Hierarchy is the masterpiece of the Devil's organization schemes to defame the name of Jehovah God and Christ Jesus and to turn men away from Jehovah."

And on page 236:

"Because the Roman Catholic Hierarchy pose before the peoples of earth as the representatives and servants of God, but in fact are the servants of the Devil, they are the grossest hypocrites."

Again on page 290:

"The members of the hierarchy chuckle in their glee and say: 'We have made lies our refuge and under falsehoods we have hid ourselves. Who knoweth us and who can see us? We pretend to pray and the dupes will pay.' By reason thereof they have been enabled to keep the mass of the Catholic population in ignorance of God and his kingdom, and to continue them in their ignorance is the reason why they warn Catholics to read none of the publications of the Watch Tower."

I am now taking up, if your Honor please, the book called Enemies. On page 29 there is an illustration of an naked woman, together with a snake or whatever it may purport to be, and it says, "Beginning of religion." Whether it came from a snake or from a naked woman there is nothing to show.

The next is on pages 192 and 193. There is an illustration, and to get it into the record I will have to read. It says, "Religionists Fighting the Lord," with a quotation from Obadiah 1. On the left-hand page are the words, "Jehovah. [fol. 52] The Battle Is God's Truth." In the middle, under a question mark, is the word "Supremacy." On the right-hand page, at the top, are the words "Satan. Rule or Ruin," with an illustration of a priest and two men with a yoke around their necks, one of them with the high hat and dressed seemingly in dress clothes, and the priest leaning on top. I will have to show it to your Honor, so that your Honor can appreciate it more than my words can express (handing a book to the Court).

And on pages 198 and 199:

"All organizations on the earth that are in opposition to God and his kingdom, therefore, necessarily take the name of 'Babylon' and 'harlot,' and those names specifically apply to the leading religious organization, the Roman Catholic church, which claims to be the mother of the so-called Christian religion. That mighty religious organization, foretold in the Scriptures, uses the method of harlots to induce politicians and commercial traffickers and others to fall into her arms and yield to her supposed charms. In the Scriptures this organization is likened unto a 'strange woman, which flatteneth with her words,' and which entices the credulous persons that are void of understanding to

yield to her influence. In the prophecies the harlot of religious organization is pictured as bedecking herself in gaudy and showy clothes, peculiar hats, lace, and silk shirts and other gaudy apparel, and she is represented as sauntering forth and indulging in singing seductive songs to inveigle others into her trap, that she might have personal adulation and praise of men and at the same time reap also pecuniary gain."

And also on page 288 of the same publication:

"Note this part of the prophecy says: 'And shall commit fornication with all the kingdoms of the world upon the face of the earth'; according to the Revised Version: 'Shall play the harlot with all the kingdoms of the world.' Such is exactly what the Roman Catholic Hierarchy organization is doing and has been doing from and after 1918 and will continue to do until the beginning of Armageddon; and while she is doing that Jehovah is doing his 'strange work' of [fol. 53] exposing her wickedness. The activity of the old whore in committing harlotry with all the kingdoms of the world appears to be more than merely establishing diplomatic relationship with all nations and being recognized as a temporal power. It surely means the carrying out of the objective of the Roman Catholic Hierarchy to set up a Facist government controlling the nations of the earth, that the Hierarchy may arbitrarily rule the nations in a dictatorial manner."

On page 292:

"The prophecy of the Lord shows that modern Tyre, the Catholic organization, commits fornication with all the nations and gains her desire. When the Hierarchy has gained complete temporal power of the earth, that will in her mind fully establish the conclusion that her desire has been fully accomplished, and then she will say, 'Peace and safety'; and then the 'ten horns,' that is, all the ruling powers of the nations, 'receive power with the beast,' the League of Nations combine being in fact a league of Fascism or combined Fascist governments dominated by the Roman Catholic Hierarchy. 'And the woman (Devil's visible religious organization, the harlot) which thou sawest is that great

city (the Hierarchy organization), which reigneth over (combined Fascism) the kings of the earth.' "

Again on page 295:

"The Roman Catholic Hierarchy with an air of superiority, and with great claim of power and authority from God, have approached the kings of the earth and said to them, in effect: 'We bestow upon you the divine right to rule. We give you holy sanctions and heavenly blessings, and by reason thereof your positions as political rulers are sacred and are ordained of God, and therefore so far as the people are concerned, you are viewed as constituting the "higher powers"; and we who compose the Hierarchy are the spiritual "higher powers" and superior to all other earthly power'. The true higher powers are Jehovah and Christ Jesus. The claim that earthly organizations are the higher powers is therefore false. In this fraudulent representation and claim [fol. 54] made by the Roman Catholic Hierarchy the harlot proceeds to gain control over millions of gullible men. Such constitutes the 'merchandise' and 'hire' of the harlot by which she draws men into her clutches. The Roman Catholic Hierarchy has fraudulently posed as the representative of God with full divine authority to bestow blessings on kings, while in truth and in fact she is the representative of the Devil. The Hierarchy uses 'the hire of the harlot' to induce the political powers to believe that she should dictate the policy of the world, and thus carry out her purpose to set up a dictatorial rule of the earth."

And on page 301:

"Fascism and Naziism mean one and the same thing and are the instrument of the Roman Catholic Hierarchy, the child of the Devil, to gain control of the earth by the Hierarchy and turn all people against God and his kingdom. The Roman Catholic Hierarchy classes every one that is opposed to her as 'red' or 'communist' and this is done to incite the people against those who stand for whatsoever is right."

On page 324 there is one of those that I won't characterize as to what its result is. It is an illustration of a naked woman being strung from the ceiling by her hands, in which a priest under the cross is directing others to inflict certain

punishment on her, such as building a fire under her feet and stretching. In the background there seems to be a coffin. I show it to your Honor (handing a book to the Court).

On pages 328 and 329:

"The chief visible enemy of God, and therefore the greatest and worst public enemy, is the Roman Catholic religious organization. For centuries that organization scornfully and arrogantly has ridden upon the backs of the peoples and nations and robbed the people of their just earnings. The day of that wicked institution must come to an end. That organization, that is to say, the Roman Catholic 'Hierarchy of Jurisdiction,' for years has boastfully said and still says: 'The gates of hell shall not prevail against (us).' These words of Jesus Christ concerning his own organization, [fol. 55] which is the habitation of Almighty God, are misapplied by the Roman Catholic Hierarchy; and this is further evidence of the presumptuous sin of that religious organization."

And on page 330:

It is the Roman Catholic 'Hierarchy of Jurisdiction' that has falsely and fraudulently assumed to shepherd the Catholic population and rob them and fleece them. Claiming to be shepherds, they have really been wolves; and to that wicked crowd Jehovah says: 'Howl, ye shepherds, and cry and wallow yourselves in the ashes, ye principal of the flock, for the days of your slaughter and of your dispersions are accomplished, and ye shall fall like a pleasant vessel.'

"The Roman Catholic 'Hierarchy of Jurisdiction,' the religious system, is hypocritical in the extreme, and God hates a hypocrite, a racketeer, and a liar, all of which that gang is."

As for the book known as Preservation, I call attention to page 81. Under the caption "They Cast Pur Before Haman" there is shown a priest, a gentleman in a high hat holding a bag marked "Dollars, and a colored gentleman, evidently shooting craps, or throwing dice. I show it to your Honor (handing a book to the Court).

Is your Honor going to take a recess? I will take up another subject after the recess.

The Court: A short recess.

(There was a short recess.)

Mr. Pickett: I didn't offer these before. I offer these phonographs and records in evidence as exhibit C.

(The objects referred to were received in evidence and marked "State's exhibit C.")

My friend thought, in order to be perfectly fair about the matter, that I should enumerate what records were offered in connection with these phonographs. We have already had Enemies. Do you want to open those others?

Mr. Moyle: Do you want to play them?

Mr. Pickett: Oh, yes. We have already played for your Honor's benefit the one called Enemies. There are other [fol. 56] records. I don't think there is much doubt that this one is Polish (indicating).

Mr. Moyle: It is not English.

Mr. Pickett: This is something in Polish that looks like Zlotzwick, on both sides. Another record is in Italian, called Geova, and in parenthesis Jehovah on one side, and on the other side Ribellione and in parenthesis, in English, Rebellion—Polish and Italian. The one Enemies is the same on both sides. So far there are three records, one to each machine, of Enemies.

Another one in Italian called Esposti, translated Exposed. Both sides are the same. Another record is called Value of Knowledge. There seems to be only one side. The other side is Riches, and there seems to be three of those records. There is of this record that Mr. Moyle would like to have me play——

Mr. Moyle: I am not telling you what to play.

Mr. Pickett: There is no use spending more time.

By Mr. Pickett:

Q. Now, Officer, leaving aside all this that I have been using so much time on: As far as you were concerned, have you related all the events that you took part in and observed in relation to this matter?

A. All that I can remember just now.

Mr. Pickett: You can inquire.

Cross-examination.

By Mr. Moyle:

Q. Let us see. Russell Cantwell was the one whom you arrested?

A. Yes, sir.

Q. Just where was he when you arrested him?

A. On Cassius Street, right in the middle of the block.

Q. On the sidewalk?

A. Yes, a little off the sidewalk on the edge of the curb; between the sidewalk and the curb.

Q. And he had these phonographs?

A. He had one of those cases and one of these cases (indicating).

Q. You arrested him on sight?

A. Yes, on sight. He was standing——

Q. Just what did you arrest him for?

A. We took him on a complaint that there was somebody canvassing from house to house, so we took him in the station to find out what he has got.

[fol. 57] Q. That was what you had him arrested for? Canvassing from house to house?

A. No, we questioned him to find out what he had.

Q. You took him down for investigation, in other words?

A. Yes, that is what we done.

Q. Everything was peaceful and quiet around there?

A. Yes, at that time.

Q. There wasn't any disorderly conduct?

A. At that time there wasn't. I didn't see any.

Q. You didn't see any disorderly conduct at any time in connection with these arrests?

A. No.

Q. By anybody?

A. No.

Q. You don't know whether he left any of those books with anybody?

A. No. Mrs. Rigby showed me one of the books, but she said she didn't get it off this young man.

Q. You don't know whether he played the record or not?

A. I heard he played the record out on the sidewalk.

Q. Where was this?

A. Right there, about the same place we picked him up.

Q. That is all you know about it?

A. That is all I know about it until we took him in the station.

Mr. Moyle: That is all.

Mr. Pickett: That is all.

FELIX GILROY, called as a witness in behalf of the State, being first duly sworn by Mr. Higgins, testified as follows:

Direct examination.

By Mr. Pickett:

Q. Your name is Felix Gilroy?

A. Yes.

Q. Your residence is New Haven, and you are a police officer of this city?

A. Yes.

Q. And were on April 26 of this year?

A. Yes, sir.

Q. Doing duty at the Howard Avenue Station?

A. Yes, sir.

Q. Mr. Gilroy, your connection with the matter of these three accused is what? Did you make the original arrest of any of them?

A. No, I didn't; I was——

Q. All right, we will get it straightened out. You were in the station when they were, there, were you not?

A. Yes, sir.

Q. And later went to the City Attorney's office with them, is that correct?

A. Yes, sir.

Q. All right, tell us what happened in the station. Were all three of these men there when you were in the station at any time? Were they all together, and if not, how many were together?

A. When I first came into the case Russell was the first [fol. 58] one brought in. He was there. Subsequently Newton was brought in with Mrs. Cantwell, and after we came back from the City Attorney's office, after having Russell, Newton, and Mrs. Cantwell, we found the younger Jesse Cantwell in the station.

Q. Well, now, let us take it from the beginning. When Russell was alone in the station what was said by him and what was said by you in relation to his being in the station, in your presence?

A. I question him——

Q. Will you pardon this personal question, please, but I am obliged to ask it. What is your religious belief?

A. Catholic—Roman Catholic.

Q. Go ahead.

A. I questioned him as to what he was canvassing or soliciting and he voluntarily opened his bags and his machine and showed us the record titled Enemies, and told us that his manner of approach would be to ask the prospective buyer if he could play the record, and with their permission he would play the record, which he played in our presence, and the record was a sales talk on the book bearing its name; and he would ask the prospect if they would buy the book if they are in a position to buy the book, and if not they would accept any contribution that could make and if they weren't in that position they would leave a pamphlet, which would be left on condition that the pamphlet would be read.

Q. Was anything said as to whether he had a permit from the authorities of this state at Hartford or not?

A. Yes, he was questioned as to whether or not he had a permit to solicit for a religious organization, and he said that he didn't.

Q. How about the other two? This is Russell you have been speaking about.

A. There was no conversation in my presence held in the station involying Newton, but in the City Attorney's office both Newton and Russell were questioned, both by the officers involved and the prosecutor.

Q. You can go ahead. You were present, were you not?

A. Yes.

Q. You can tell what was said in your hearing?

A. It was along the lines of the questioning in the station and their purpose and the manner of approach, and whether or not they had a permit from the State Welfare Council, [fol. 59] and as to their connections—what sect they belonged to. They told us, in response to a question, that they were members of Jehovah's Witnesses, who stand for the truth.

Q. Was there anything said about their being on Cassius Street that day? It is not particularly important as far as you are concerned; but there wasn't anything said that you recollect about how they came to be arrested or where?

A. No. I happen to know that; I was in the station when the complaint came in and the officers were sent out.

Q. You were there when Russell was brought in?

A. That is right.

Q. So you knew in a general way what it was all about?

A. Yes, sir.

Q. You knew in a general way what this matter was about?

A. Yes, sir.

Q. Have you ever heard of such matters as these spread among the public and especially the Catholics?

A. Yes, sir, I did.

Q. You are familiar with the whole subject, are you not, as to how these pamphlets and books and sales talks refer to the Catholic religion?

A. Yes, I heard about that.

Q. You heard about that long before this?

A. Sometime before.

Q. So you had some prior knowledge with which to conduct your conversation with the accused with regard to the matter?

A. Yes, sir.

Q. Well, have you now related all that you did in connection with these cases? In other words, have you told the whole story?

A. About all of it that I recall.

Mr. Pickett: You can inquire.

Mr. Moyle: No questions.

Mr. Pickett: That is all.

ESTHER CANTWELL, called as a witness in behalf of the State, being first duly sworn by Mr. Higgins, testified as follows:

Direct examination.

By Mr. Pickett:

Q. What is your own first name?

A. Esther.

Q. How do you spell it?

A. E-s-t-h-e-r.

Q. Where do you live?

A. Where do I live now?

Q. Yes.

A. I live on Staten Island.

Q. On April 26 of this year where did you live?

A. I lived at—in New Haven.

Q. A little louder.
A. Woodbridge, in New Haven.
Q. You mean that you lived in Woodbridge outside New Haven?
[fol. 60] A. Yes.
Q. New Haven doesn't claim Woodbridge at all.
A. There is no post office by the name of Woodbridge.
Q. Mail came from New Haven?
A. Yes. No. Yes.
Q. Where in Woodbridge?
A. I don't know.
Q. I will help you out. I will tell you where you lived in April. I have the addresses that somebody wrote on those cards. Do you see that (handing a card to the witness)?
A. Bradley Highlands, yes.
Q. Mrs. Cantwell, so that we won't trespass on the laws of evidence at all: Mr. Newton Cantwell is your husband, is he not?
A. Yes.
Q. He is the one in the middle?
A. Yes.
Q. And the other two, Jesse and Russell, are your sons, are they not?
A. Yes, they are.
Q. Now, I don't want to have you say a thing, and I shan't ask you a thing, about testifying against your husband. You wouldn't want to, anyway, if you could, would you? You wouldn't want to testify against your husband? The law says that you don't have to. You don't want to do it?
A. No.
Q. And I don't want to have you, but it doesn't say anything about your sons. You can testify against your sons, but don't say a word about your husband. On April 26 of this year were your sons living with you at Bradley Highlands in Woodbridge?
A. Absolutely.

Mr. Pickett: Can you hear the lady?
Mr. Moyle: Not quite.

By Mr. Pickett:

Q. This gentleman doesn't hear you, Mrs. Cantwell.
A. Yes, they were living with me.

Q. As a matter of fact, did you own an automobile? Was there one in the family at that time?

A. Yes.

Q. A good one?

A. (The witness laughed.)

Q. What kind of car was it? I don't mean the make.

A. A Ford.

Q. Was it a sedan or a roadster? That is what I am getting at.

A. It is a coach.

Q. On that day, in the morning of April 26, did you and your two sons come to New Haven?

A. Yes.

Q. I am talking about the day when they were arrested. You will never forget that, will you? On that day, April 26, when they were arrested, you came to New Haven with [fol. 61] your two sons. Do you know where Cassius Street is?

A. Yes.

Q. Did you go on to Cassius Street with your two sons about 4 or 4:30 in the afternoon?

A. (There was no answer.)

Q. That isn't a hard one. Either you did or did not.

A. I was on Cedar Street.

Q. No. No. I will withdraw the question for a minute. Did your sons go on to Cassius Street that afternoon? I will leave you in the automobile on Cedar Street near Cassius.

A. Yes.

Q. What time was it when they left you on Cassius Street with the automobile?

A. (There was no answer.)

Q. Well, I will help you out. Don't look at them. I am not putting you into any hole. Was it about 4 or 4:30 when you were down there?

A. I suppose so, but I don't know.

Q. You went to the Howard Avenue Station later, didn't you?

A. Yes.

Q. Well, now, did each of your sons have one of these phonographs and records and one of these bags with these books when they were on Cassius Street?

A. Yes.

Q. What were they doing on Cassius Street?

A. Preaching the gospel.

Q. What? Preaching the gospel in the middle of the street?

A. (The witness laughed.)

Q. How were they preaching it then? You have been going around with them for a long time. Can't you tell us?

Mr. Moyle: Just a minute. There is an objection. How can she tell what they were doing?

By Mr. Pickett:

Q. You know what they were doing, don't you?

A. (There was no answer.)

Q. Don't look at him. You know what they were doing on Cassius Street, don't you?

Mr. Moyle: That is objected to as leading and suggestive.

Mr. Pickett: That is what you said you wanted to have me ask her.

Mr. Moyle: I didn't tell you anything that you should ask her.

By Mr. Pickett:

Q. Do you know what they were doing on Cassius Street?

A. Well, I was on Cedar Street.

[fol. 62] Q. You haven't any idea what your two sons were doing on Cassius Street, is that right?

A. (There was no answer.)

Q. Don't look at him all the time or at your sons. Look at the Judge once in a while. He is the one who wants to know about this. What were your two sons doing on Cassius Street that afternoon, if you know?

Mr. Moyle: The same objection. If she knows.

The Court: He asked "if you know."

Mr. Pickett: Yes, if she knows. Of course if she doesn't know she can't help us at all.

By Mr. Pickett:

Q. Do you know?

A. Well, I had an idea, but I wasn't there.

Mr. Moyle: Just a minute. If she knows.

Mr. Pickett: She only has a glimmering idea. She can't tell us a thing.

The Court: Let us get on.

By Mr. Pickett:

Q. You told us that they were preaching the gospel?

A. I had an idea.

Q. You knew that. You didn't have any idea. That was a fact. You knew that both of them were preaching the gospel; that is correct, isn't it?

A. (There was no answer.)

Q. That is correct, isn't it? Why do you hesitate? Either it is correct or it isn't correct. Which is it? Can't you answer?

A. (The witness laughed.)

By the Court:

Q. You can answer yes or no.

A. Well, I was on Cedar Street.

By Mr. Pickett:

Q. Now don't go over that again. The Judge says for you to answer yes or no.

Mr. Pickett: Read the question, Mr. Kapleau.

(The last question was read.)

Q. What is the answer?

A. (There was no answer.)

Q. The Judge has told you to answer yes or no.

[fol. 63] By the Court:

Q. Answer yes or no.

A. Yes, I did.

By Mr. Pickett:

Q. All right, you have answered it. And this automobile that you were in on Cedar Street near Cassius Street was the family automobile?

A. Yes.

Q. Was there anybody else in it besides you while your two sons were on Cassius Street?

A. No.

Q. What did you have in the automobile?

A. We had a phonograph and a Bible.

Q. A what?

A. A Bible.

Q. Yes? What else?
A. Bible helps.
Q. What else?
A. (There was no answer.)
Q. We will see if we can help you. You had some of these books in the automobile, Enemies, Riches, Preservation, and those pamphlets written in English, Italian, Polish, and other languages? You had some of them in there, didn't you?
A. Yes.
Q. How many? Do you know?
A. I don't know.
Q. Well, were there more than there are in the bundle and in front of you?

Mr. Moyle: The same objection. He is cross-examining his own witness. She said she doesn't know.
Mr. Pickett: Cross-examining my witness?
Mr. Moyle: That is what you are trying to do.
Mr. Pickett: Your honor can see that she is very adverse, and I claim that if it is at all cross-examination, I am privileged to do it.
The Court: She may answer the question.

By Mr. Pickett:

Q. If you don't know the question say so. You don't want to testify, do you?
A. If I knew how I wouldn't mind.
Q. I am making — as easy as I can, am I not?

By the Court:

Q. Just answer the question. If there is any question that is not clear, tell him. If there is any question that you don't know anything about, you don't have to answer it.

[fol. 64] By Mr. Pickett:

Q. I will go back again to the automobile in which you were about 4 or 4:30 on April 26, when the automobile and you were on Cedar Street near Cassius and there were these books in there: I want to know whether there were more in the automobile at that time than there are now here and on the Judge's bench.
A. Yes.
Q. How many more? Twice as many?
A. Well, I don't know.

Q. Well, a good many?

A. Well (nodding)——

Q. You have to answer. What does "well" mean? Yes or no?

A. Yes, there was more than here.

Q. Did you bring those books from your home into the automobile on that day?

A. Yes.

Q. How long had you been in New Haven on that day? In other words, what time of the day did you leave home that day?

A. About nine o'clock, I suppose.

Q. Where did you go in New Haven?

A. Into New Haven.

Q. Where in New Haven? Have you any idea?

A. Well, in near Cedar Street.

Q. And how long were you there before the policeman came up to the car that you were in? How long had you been in that neighborhood?

A. Well, as I had no time——

Q. No, no, not that.

A. I don't know.

Q. Approximately how long? Half an hour, six hours, since nine o'clock in the morning, or how long? Give us your best estimate. I don't know anything about time. Can you tell time?

A. (The witness laughed.)

Q. That is an easy one. Can you tell time?

A. Well, I had been actually in the automobile at that time, I suppose, about thirty minutes, but——

Q. Thirty minutes at that spot?

A. Yes.

Q. Can you tell time?

A. Why, yes.

Q. Can you read and write?

A. Yes.

Q. Well, now, when you left your home, at nine o'clock in the morning, and went down into that general neighborhood, what time did you get there? Have you any idea? Was it ten o'clock?

A. It must have been about that.

Q. You stayed around that neighborhood until the policeman came up to where you were in the automobile; isn't that right?

A. (The witness nodded.)

Q. Over six hours; that is right, isn't it?

A. Yes.

Q. And your sons were around there too, weren't they, preaching, as you put it—What was it? Preaching what?

[fol. 65] A. Preaching the gospel.

Q. Preaching the gospel in that neighborhood, together with your sons, who had these phonographs and bags and books and you had the ones in the automobile; that is right, isn't it?

A. Yes.

Q. Where did you get your dinner? Did you have any that day?

A. We had lunch.

Q. You brought the lunch from home?

A. (The witness nodded.)

Q. You were going to make a day of it down there preaching the gospel, as you put it; that is correct, isn't it?

A. Yes.

Q. Did you know the kind of religion the people in that general neighborhood had?

A. No.

Mr. Moyle: Objected to as incompetent, irrelevant, and immaterial.

Mr. Pickett: She said she didn't know, so what harm does it do?

By Mr. Pickett:

Q. Anyway, you went to the police station afterward, didn't you?

A. Yes.

Mr. Pickett: You can inquire.

Mr. Moyle: No questions.

JOHN J. GANLEY, called as a witness in behalf of the State, being first duly sworn by Mr. Higgins, testified as follows:

Direct examination.

By Mr. Pickett:

Q. What is your name, please?

A. John Joseph Ganley.

Q. Where do you live now?
A. On Rosette Street.
Q. What number?
A. 173 Rosette Street, New Haven.
Q. On April 26 of this year where did you live?
A. 173 Rosette Street, New Haven.
Q. Have you any folks living on Cassius Street?
A. My mother lives there.
Q. Did you live there at one time?
A. Yes, sir.
Q. I take it you lived there until the time when you married?
A. Yes.
Q. When were you married?
A. November 8, 1937.
Q. Of last year?
A. Yes, sir.
Q. After that did you visit your mother's home?
A. Every day.
Q. Occasionally or frequently?
A. Every day.
Q. What is your business, please?
A. I work on the railroad.
[fol. 66] Q. What is your religion, if you will pardon a personal question?
A. Catholic.
Q. You have been a Catholic all your life?
A. Yes, sir.
Q. Your family are Catholics?
A. Yes, sir.
Q. Are you well acquainted on Cassius Street?
A. Yes, sir.
Q. Are there very many people of the Catholic religion who live on both sides of Cassius Street?
A. Quite a few; mostly all.
Q. Cassius Street is pretty thickly settled with Catholics?
A. Yes, sir.

Mr. Moyle: Objected to. He is cross-examining his own witness, and it is leading and suggestive.

Mr. Pickett: It is leading.

By Mr. Pickett:

Q. Were there very many or a few Catholics on Cassius Street on April 26?
A. There was a lot of them.

Q. Do you know a man named Cafferty, who lives on Cassius Street?

A. Yes, sir.

Q. Where did he live on April 26 in relation to your mother's house?

A. Almost across the street from my mother.

Q. Is he Catholic?

A. Yes.

Q. You all go to St. Peter's Church on Kimberly Avenue?

A. Of course my mother is there, but I go to Sacred Heart. The Cassius Street people go to the same place.

Q. The Cassius Street people go to St. Peter's Church on Kimberly Avenue, and you used to go there before you moved out of the parish?

A. Yes, sir.

Q. Calling your attention to sometime in the middle of the afternoon of April 26, were you at your mother's home?

A. I just came up from the railroad yard.

Q. About what time? Will you tell us that?

A. I got through at 4, and I imagine by the time I got dressed it was about 4:10.

Q. When you were at your mother's?

A. Yes, sir.

Q. April 26, I believe, was a Tuesday. Did you see Cafferty that day?

A. Yes, sir.

Q. Where did you see him?

A. I saw John and a couple of more people on Cassius and Cedar. There was a Ford coach standing across the street from the brick apartment on Cedar Street. I saw Leslie Leigh on his motorcycle, looking around.

Q. He is the police officer?

A. Yes, sir, and I asked John what the trouble was.

Q. You can't tell what he said, but you asked him about [fol. 67] Leigh's being down there?

A. Yes, sir.

Q. And he told you something?

A. Yes, sir.

Q. All right. Now, later on——

A. Then there was an insurance man came there that I know who goes to my mother. Of course he asked us what the trouble was, and we walked up to my mother's house, so we see one of these——

Q. Well, did you go inside?

A. No, we were standing on the steps at the time.
Q. You and who else?
A. There was John Cafferty.
Q. Yes?
A. Mentor Canelli, and myself.
Q. Now go on from that point and tell what occurred.
A. We were talking there and this fellow came down the street, going from house to house.
Q. Who was that? Do you recognize him?
A. That end fellow there.
Q. Which one?
A. The fellow on the end.
Q. That is Jesse.
A. Jesse.
Q. He was going from house to house?
A. Yes, sir.
Q. Did he have anything?
A. Yes, sir, he had one of those portable victrolas and one of these bags, and if I remember right, he wanted to ask—he asked us if we wanted to hear the record.
Q. Go ahead and tell what happened.
A. So I never thought that they would have such a record.

Mr. Moyle: Objected to.

By Mr. Pickett:

Q. Never mind. The gentleman doesn't want your thoughts. What happened or what was said?
A. We heard the record.
Q. Do you know what record you heard?
A. The only thing I heard, if I remember right now, is Judge Rutherford's name mentioned.
Q. Would you know the record if you heard it again?
A. I think so. I couldn't say for sure.
Q. Would it refresh your recollection if you heard it again?
A. If you don't mind; it may.
Q. Not if his Honor doesn't. I will play it for you.

Mr. Moyle: We object to that. What is the purpose of it?
Mr. Pickett: To refresh the witnesses's recollection.
Mr. Moyle: Suppose he did hear it.
Mr. Pickett: Will you admit that he heard the record Enemies, which his Honor has already heard?
[fol. 68] Mr. Moyle: I don't know whether he heard that one or not.

Mr. Pickett: That is what I want to find out. He may have heard a Polish one.

Mr. Moyle: He heard a record from this man; I think that that is sufficient.

Mr. Pickett: I think he can identify the record by listening to it, the same as he could identify a note he made. I ask for permission to so refresh his recollection.

The Court: You are not willing to admit that he heard the specific record?

Mr. Moyle: Just a minute. We will admit, your Honor, that he heard the Enemies record, the one that was played here.

Mr. Pickett: Thank you. You saved time.

By Mr. Pickett:

Q. The gentleman says that you heard the record that was played here this morning. Were you hear this morning?

A. Yes, sir.

Q. You were here this morning and heard a record played?

A. Yes, sir.

Q. Was Cafferty down there?

A. Yes, sir.

Q. As a result of hearing that record played did Cafferty do anything or say anything to this young man?

A. Well, we——

Q. Tell what happened.

A. After the record was over we looked at one another in surprise to think that——

Q. Never mind about thinking. You looked at each other?

A. And then—I just don't remember now which one of was going—we felt like hitting this young lad and told him that he had better take his bag and victrola and be on his way.

Q. Did you feel like hitting him?

A. Sure.

Q. On account of what you heard in the record?

A. Yes, sir.

Q. Are you a peaceful sort of lad ordinarily?

A. I never was arrested for any trouble at all.

Q. Cafferty is too, isn't he?

A. Yes, sir.

Q. As a matter of fact, after you both heard the record you felt as though you wanted to do something about it, both of you being Catholics, didn't you?

Mr. Moyle: Objected to as leading and suggestive.
Mr. Pickett: All right, I will withdraw it.

[fol. 69] By Mr. Pickett:

Q. After having heard the record, what was your reaction to it?

Mr. Moyle: Objected to as having already been testified to.
Mr. Pickett: Oh, I claim it.
The Court: Admitted.

A. What was it?

By Mr. Pickett:

Q. I will put it again. After hearing this record——
A. Yes, sir.
Q. (Continuing) what was your reaction? Did you want to do something or nothing about it? Did you want to do something?
A. Yes, sir.
Q. What did you want to do?
A. I just wanted him to take that victrola and get out of there.
Q. Did you want to beat him up or do anything like that?
Mr. Moyle: Objected to as leading and suggestive.
Mr. Pickett: It is. Well, I will withdraw it.

By Mr. Pickett:

Q. Did you do anything else or have any other reaction?
A. No, sir, because he said that he would take the victrola, and he went.
Q. What did Cafferty do or say?
A. He was all flushed up and he said, if I remember right —He said, "It is pretty raw."
Q. Yes?
A. So we talked there.
Q. Was there anything else that he said? Tell what Cafferty said or did?
A. Well, as I said before, he said that he didn't think it was very nice having anything like that played, so they were talking there and I went up in the house, because I had to leave there soon.
Q. You have now told us all about the incidents that happened there?
A. Yes, sir.

Mr. Pickett: You can inquire.

Cross-examination.

By Mr. LaMacchia:

Q. You say that you visit your mother approximately every day. Was this the first time that you saw one of Jehovah's witnesses on that street?

A. Yes, sir.

Q. You had never seen them there before?

A. No, sir.

[fol. 70] Q. You didn't know the type of work they were doing?

A. No, sir.

Q. Now, you say that on this particular day you were walking toward your mother's house with Cafferty and another fellow?

A. I came up from the railroad yard and drove into that street with my car and parked at my mother's house and saw these people at Cedar and Cassius, and walked back there. That is where I was.

Q. From there you walked back to your mother's house with Cafferty and some other man?

A. Yes, sir.

Q. You were in front of your mother's house?

A. Yes, sir.

Q. And then you say that Jesse came down the street carrying one of the phonographs?

A. Yes, sir.

Q. And he came up and asked you whether or not he could play the record for you, is that right?

A. He asked us if we wanted to hear the record.

Q. And you gave him permission?

A. Right.

Q. And he played the record through completely?

A. If I remember right, he did.

Q. The record played through completely?

A. Yes, sir.

Q. And when the record was all through you said to Mr. Pickett that you looked at each other amazed somewhat. Is that true?

A. Yes, sir.

Q. And then you told him to take the record and be on his way?

A. Right.

Q. None of you said anything else to him aside from that, did you?

A. Well, right then we didn't, no, we were so stung about it to think that our religion, which all our lives we believed in, would be run down like that.

Q. You are a devout Catholic, I presume?

A. Yes, sir.

Q. Have you ever heard the Catholic religion attacked at any other time?

A. Just now and then you may hear a crack about it.

Q. It is nothing unusual; isn't that true?

A. Well, it may be run down, but I don't stand for it.

Q. But you have heard it attacked at other times, haven't you?

A. Yes.

Q. As a matter of fact, you have heard all other religions attacked at other times, haven't you?

A. Right.

Q. And you have heard all political parties and all countries attacked?

A. Yes.

Mr. Pickett: Objected to. We have gone into religion. Do we have to go into politics? There are many parties to inquire about. I object to it as immaterial. There is no claim that he discussed any political questions.

[fol. 71] Mr. LaMacchia: I am not claiming that.

The Court: As far as the question deals with religion it may stand; as far as it deals with anything else it may be stricken out.

By Mr. LaMacchia:

Q. You are pretty broad-minded, Mr. Ganley, aren't you?

A. Yes, sir.

Mr. Pickett: I beg your pardon. What was that?

Mr. LaMacchia: I asked him if he was broad-minded.

Mr. Pickett: I object to that. It is impossible to answer a question like that.

Mr. LaMacchia: He answered "Yes sir," so he must know.

The Court: It may stand.

Mr. Pickett: Maybe he has something there that we haven't got.

Mr. LaMacchia: Perhaps he has.
Mr. Pickett: All right, I move that the answer go out.
The Court: It may stand.

By Mr. LaMacchia:

Q. So when you hear different types of attacks on religion, you overlook them to some extent, don't you? Isn't that true?

A. To some extent.

Q. I mean that you don't take everything personally, do you?

A. Well——

By Mr. Pickett:

Q. A little louder.

A. No, I don't.

By Mr. LaMacchia:

Q. When you told Jesse Cantwell to go, he picked up his phonograph and went, didn't he?

A. Yes.

Q. And that was the last you saw of him?

A. No, sir.

Q. When did you see him again?

A. I drove him to the station.

Q. Oh, you drove him to the station?

A. Yes, sir.

Q. At whose request?

A. At an officer's command.

Q. When this case was tried in the City Court you didn't testify, did you, Mr. Ganley?

A. No, sir.

[fol. 72] Q. You testified on direct examination, in answer to a question addressed to you by Mr. Pickett, that Mr. Cafferty said to you that it was pretty raw?

A. Yes, sir.

Q. Was that the statement he made?

A. About that.

Q. But none of you made an attempt to inflict any violence upon Mr. Cantwell, did you?

A. We didn't. When we told him to go, why, he went, but——

Mr. LaMacchia: That is all.

Redirect examination.

By Mr. Pickett:

Q. Finish your answer.

A. I imagine if he stayed there, why, we might have started something.

Mr. LaMacchia: I ask that that be stricken out.

Mr. Pickett: I claim it as responsive.

Mr. LaMacchia: It is not responsive.

The Court: It may stand.

By Mr. LaMacchia:

Q. When you say that you imagine you would, Mr. Ganley, you mean if he had entered into an argument with you?

A. Well, sure.

Redirect examination (continued).

By Mr. Pickett:

Q. If he had stayed there, Mr. Ganley, you believe that either you or Cafferty would have inflicted something on him in the way of violence?

A. I imagine so if he still went on——

Q. Was that the way you felt?

A. (Continuing) and gave more of his books or more of the records. If he played them I imagine that we would have.

Q. Did he show you any books at all?

A. Yes, sir.

Q. What did he show you?

A. He showed me this book.

Q. What is the name of it?

A. Enemies.

Q. In connection with playing the record?

A. Yes, sir.

Q. Did you ever see or hear of that book before?

A. Yes, sir.

Q. Where have you seen or heard of it?

A. Well, I have seen it that day.

Q. All right. But I mean before then.

A. Oh, before that?

Q. Yes.

A. No, sir, I have not.
Q. You never heard of it before that?
A. No, sir.
[fol. 73] Q. Was there anything said about what the book contained or why he showed it to you?
A. Well, he showed us the book and said that if we wanted to contribute towards this organization that we could, or if we were firm believers we could have the book for nothing.
Q. Now have you related everything that happened?
A. To my knowledge, yes, sir.

Mr. Pickett: You can inquire further.
Mr. LaMacchia: No questions.

JOHN CAFFERTY, called as a witness in behalf of the State, being first duly sworn by Mr. Higgins, testified as follows:

Direct examination.

By Mr. Pickett:

Q. What is your name?
A. John Cafferty.
Q. Where do you live?
A. 20 Cassius Street.
Q. You have lived there some little time?
A. Yes, sir, about ten years.
Q. You lived there on April 26?
A. Yes, sir.
Q. You know Mr. Ganley, the previous witness?
A. Yes, I do.
Q. He previously lived on Cassius Street until his marriage, did he not?
A. He did.
Q. You have known him a good many years?
A. Yes, sir.
Q. What is your religion, Mr. Cafferty?
A. I am a Catholic.
Q. You have been so all your life?
A. Yes, sir.
Q. And you worship at St. Peter's Catholic Church, on Kimberly Avenue?
A. Right.

Q. Your family are Catholics also?

A. Yes, sir.

Q. What have you? A mother and father?

A. My father is dead. I have a mother, brother, and sister.

Q. They are all Catholics?

A. Yes, sir.

Q. And so is the Ganley family?

A. Yes, sir.

Q. How about Cassius Street? Are there a good many Catholic people who live on that block from Howard Avenue to Cedar Street?

A. Yes, approximately ninety per cent of them are Catholics.

Q. It is a pretty thickly-settled neighborhood, isn't it?

A. It is.

Q. Double houses and single houses ninety per cent Catholics?

A. Approximately.

Q. Yes, according to your estimate. On the 26th day of April, it has been testified, you met Ganley at the corner of Cedar and Cassius. Is that right?

A. Right.

Q. And that you went with him to his mother's house at 13, is it——

A. Yes, 13.

[fol. 74] Q. (Continuing:) Cassius Street, and that while you were on or at the steps you saw one of these Cantwells. Is that correct?

A. That is right.

Q. Which one did you see?

A. Jesse, the youngest.

Q. He is the one farthest away from where you are sitting?

A. Right.

Q. Did you see the other two around there at all?

A. I saw the one on this end—Russell.

Q. That one is Russell (pointing).

A. Russell. I saw Officer Leigh make the arrest.

Q. Of Russell?

A. Of Russell, yes, sir.

Q. Did you notice what Russell had?

A. He had one of those portable phonographs and his little brief case.

Q. Did you see Russell do anything before he was arrested or at the time of his arrest?

A. I did not. I saw him come off a porch and he went down, and Officer Leigh was waiting for him and he called him down, and that was when I first noticed him.

Q. Now we will go back to the father, Newton. Did you see him around at all?

A. No, I don't believe I saw him at all.

Q. Anyway, as far as Jesse is concerned and his coming to where you and Ganley were: Did he have the phonograph and the bag with the books and pamphlets?

A. He did.

Q. Did he say anything to you?

A. He told us that he would like to play this record for us.

Q. Did he play it?

A. He did, yes, sir.

Q. Do you know what one he played?

A. It was that one titled Enemies.

Q. He played it completely?

A. He played it completely, yes, sir.

Q. Did he say anything to you about books and pamphlets?

A. Yes, he showed us this Riches—I believe it was one named Riches—and said that we can have it, and if we wanted to give him a slight notation—I mean donation—he would be very appreciative, and I believe he also told us that if we couldn't give him anything we could have it regardless.

Q. If you couldn't give him anything he would give it to you anyway?

A. Free, yes, sir.

Q. You recognized what the record said, didn't you?

A. I did, yes.

Q. You recognized that it was an attack on the Catholic Church and on your religion, didn't you?

A. Yes, sir.

Mr. Moyle: Objected to as leading and suggestive.

Mr. Pickett: All right.

[fol. 75] By Mr. Pickett:

Q. You recognized what the record said, did you not?

A. I did.

Q. In regard to your lifelong religion?
A. I did, sir.
Q. What was your reaction to that?
A. I thought it was a pretty rotten attack on the religion.
Q. Did you want to do something about it?
A. Well, I was tempted to do something.
Q. What?
A. Throw him off the street.
Q. Physically, you mean?
A. Physically, yes, sir.
Q. Commit a breach of the peace on him?
A. Well, practically.
Q. On account of what you heard that record say against your religion?
A. Yes.

Mr. LaMacchia: This type of examination is leading.

Mr. Pickett: I believe it is leading. If that is the objection I will start again. I thought that before a judge it didn't make so much difference.

The Court: If there is any objection make it at the time the question is asked and I will rule on it.

By Mr. Pickett:

Q. As a matter of fact, Mr. Cafferty, did you say anything to Jesse Cantwell, notwithstanding the feelings which you have expressed?
A. I told him he had better get off the street before something happened to him.
Q. Was that the end of the matter?
A. That was. He picked up his books and walked up the street.
Q. Did you see where he disappeared?
A. Yes, he ducked into the next house.
Q. Who lives next door to you, the house that he went into?
A. Next door to Ganley is a lot, and the house past the lot he went into.
Q. Do you know Mrs. Rigby on Cassius Street?
A. I did, yes, sir.
Q. She lives on the same side of the street that you do, doesn't she?
A. Yes.
Q. She is a married lady?

A. Yes.
Q. Of a fine character?
A. Yes.
Q. A good Catholic?
A. Right.
Q. Did any of the men call on her?
A. No, I didn't see. I think they hit her house before I knew what was going on.
Q. If anything had happened it was before this incident that you told about?
A. Yes, sir.

Mr. Pickett: You can inquire.

[fol. 76] Cross-examination.

By Mr. LaMacchia.

Q. How old are you, Mr. Cafferty?
A. Twenty-six.
Q. Are you employed?
A. Yes, sir.
Q. What is your line of work?
A. I work in the Eastern Screw Machine Company.
Q. You are a machinist?
A. No, a shop hand.
Q. Do many people work in this factory?
A. Well, when things are running smoothly there are 250.
Q. How many are there in your room now?
A. Eleven.
Q. Have you ever had a discussion about religion in your room?
A. No.
Q. You never heard religion discussed among the men?
A. No, they know better.
Q. You are a devout Catholic, I understand.
A. I am.
Q. Were you an altar boy?
A. No, I was not.
Q. Do you go to confession regularly?
A. I do.
Q. As a matter of fact, the Catholic religion is very close to you; isn't that true?
A. It is.
Q. You say that on the day in question you saw Officer Leigh make the arrest of Russell?

A. Well, I saw him questioning him and take him up to the corner.

Q. Were you at the corner then?

A. Yes, I walked down after him.

Q. Did you hear him question him?

A. No, I did not.

Q. Did you know the reason why he was arresting him?

A. I was told.

Q. When?

A. On the corner.

Q. You were told on the corner?

A. Yes.

Q. What was the reason why he was arresting him?

A. That he was around making an attack on the Catholic religion and that some one had complained on him, and he was picked up for investigation.

Q. You knew that?

A. Yes.

Q. You were told that on the corner?

A. Yes.

Q. After that you walked back with Mr. Ganley and somebody else?

A. Yes.

Q. You walked back in front of Ganley's house didn't you?

A. Yes.

Q. And then Jesse came along, didn't he?

A. He did.

Q. You saw Jesse carrying the phonograph record?

A. Yes.

Q. And you wanted to hear it?

A. No, I didn't want to.

Q. He asked you if he could play it?

A. Yes.

Q. And you gave him permission to play it?

A. Yes.

Q. So as a matter of fact you knew at that time what the record contained, didn't you?

A. No, I didn't know what the record contained.

Q. But you had a good idea of what it contained?

[fol. 77] A. Fairly, yes.

Q. You knew that the other person was arrested because he had been playing records attacking the Catholic religion?

A. I knew that, yes.

Q. And you listened to this record?
A. Well, I wanted to find out for myself.
Q. And you let him play the record all the way through?
A. Yes.
Q. During the playing of the record, in the middle where it attacks the Catholic religion you didn't tell him to shut it off?
A. No, we did not.
Q. You didn't say anything to him?
A. No.

Mr. LaMacchia: That is all.

Redirect examination.

By Mr. Pickett:

Q. As far as your recollection goes, you have now told us the entire incident as it occurred, so that there isn't anything you want to add? You have told us everything that happened?
A. As far as I know, I have told you everything I know.
Q. Go ahead if you haven't told us. Did you say that you have?
A. Yes, I have.

Mr. Pickett: All right, that is all.
Mr. LaMacchia: That is all.
Mr. Pickett: Mrs. Rigby.
The Court: How long will this witness take?
Mr. Pickett: Not very long with me, but I can't finish in a minute.
The Court: I think we had better suspend until two o'clock.

(A recess was taken until two o'clock P. M.)

Afternoon Session

ANNA RIGBY, called as a witness in behalf of the State, being first duly sworn by Mr. Stapleton, testified as follows:

Direct examination.

By Mr. Pickett:

Q. What is your own name?
A. Anna Rigby.
Q. Where do you live?

A. 10 Cassius Street.

Q. New Haven?

A. New Haven.

Q. You are a married lady?

A. Yes, sir.

Q. What is your religion?

A. Roman Catholic.

[fol. 78] Q. And have been all your life?

A. Yes, sir.

Q. And your family also?

A. Yes, sir.

Q. You are a parishioner in St. Patrick's Roman Catholic Church?

A. Yes, sir.

Q. Mrs. Rigby, on the 26th day of April of this year were you living at 10 Cassius Street?

A. Yes, I was.

Q. On that day, in the afternoon, did you see any of these three men on Cassius Street at or near your house?

A. I saw Russell at my front door.

Q. Russell is the one nearest to you?

A. Yes, nearest me.

Q. Did he have any paraphernalia with him?

A. Yes, he had one of these cases and one of the portable victrolas.

Q. How did he attract your attention at your house?

A. He rang the door bell.

Q. You live on what floor?

A. The second floor.

Q. In consequence of that did you go to the door?

A. Yes.

Q. He was alone, I take it?

A. Yes.

Q. What did he say to you?

A. He wanted to come in and play the record, and he had the book Riches with him.

Q. He showed it to you?

A. He showed it to me.

Q. And he wanted to play the record?

A. He tried to play the record, and I told him I wasn't interested in either one.

Q. Well, Mrs. Rigby, when you saw this book Riches, as far as you were concerned did it mean anything to you?

A. Yes. I had bought one of those books previous from some woman and I had read part of it, so as soon as I saw him with the book again I knew what it was.

Q. So you didn't contribute?

A. No.

Q. Or didn't listen to the record?

A. No.

Q. And didn't get one of the books?

A. No.

Q. Because you had one?

A. I had one already.

Q. I call your attention to a book. Look at it and see if you can recognize it in any way as the one you had.

A. Yes, I have some of it marked off. I don't know just what pages.

Q. Look at some of the turned-down pages and see if you can recognize one.

A. That is one there (indicating).

Q. That is the book?

A. Yes, this is my book; it is well worn.

Q. Not from use?

A. No.

Mr. Pickett: This is already in evidence, if your Honor pleases.

Q. Now, Mrs. Rigby, what was your reaction when Russell came to your house with this phonograph and these [fol. 79] books or that book which you recognized? How did you feel about the matter?

A. I felt that they should be taken off the street. I didn't think it was anything for us to listen to.

Q. Did you feel enough worked up to want to do something to them?

A. I did do something.

Mr. LaMacchia: I object.

Mr. Pickett: As leading?

Mr. LaMacchia: Yes.

By Mr. Pickett:

Q. How did you feel? Will you explain?

A. I was really mad and I immediately went in and put the complaint on.

Q. To the police?

A. To the sergeant of the Howard Avenue Station.

Q. Did you feel anything else besides anger?

A. I don't know. I know I was really mad over it.

Q. You wanted to do something about it?

A. I did.

Mr. LaMacchia: I object. It is the same question. It is leading.

Mr. Pickett: I claim it in view of her answer.

The Court: It may stand.

By Mr. Pickett:

Q. What did you feel like doing?

A. I felt like——

Mr. LaMacchia: Just a moment. I object. That question has been answered. He asked that question and it was answered. She testified that she made the complaint to the sergeant.

Mr. Pickett: It was partly answered. I claim that I haven't elicited everything as to the woman's feeling that she wanted to take, perhaps, an active step in doing something to this fellow or something in the form of physical violence to him. I claim that I have a right to go into the workings of her mind under common law breach of the peace—that having met with this situation and having her religion attacked as it is in these pamphlets, she felt like, as we put it vulgarly, perhaps, doing something to inflict violence on him, although she is a woman. She was so [fol. 80] worked up that she wanted, perhaps, to resort to violence and hit or strike him, in addition to what she has already said.

Mr. LaMacchia: In addition to my other objection, I want to object to the manner in which our good brother makes these speeches. He puts into her mouth almost exactly the words he wants her to say.

Mr. Pickett: Let us see if she says them.

The Court: Ask the question.

Mr. Pickett: You ask the question, Mr. Kapleau.

(The last question was read, as follows:)

"Q. What did you feel like doing?"

A. Well, I felt like getting them out of there, as I said, and I really was mad enough, I suppose, to hit him if he wouldn't get away.

Mr. Pickett: You can inquire.

Cross-examination.

By Mr. LaMacchia:

Q. Mrs. Rigby, do you remember testifying in the City Court of New Haven on April 29, 1938——

A. Yes.

Q. (Continuing:) in the cases of State against Jesse, Russell, and Newton Cantwell?

A. Yes.

Q. Do you remember answering a question put to you by the prosecuting attorney as to the type of book he offered to sell you, in which you said, "He offered to sell me the Enemies book?"

A. Yes, he did. He told me the price of the book was a quarter.

Q. It was the Enemies book?

A. Riches, not Enemies.

Q. You don't remember testifying to the fact that it was Enemies?

A. I didn't see Enemies. I saw Riches, the red book; I didn't see this book at all.

Q. You didn't see this book at all?

A. Not until later in the day. I saw him across the street with them.

Q. So if you did testify in the City Court on the 29th of April that he offered to sell you the Enemies book, it was a mistake?

A. Well——

Mr. Pickett: Wait a minute. I object to it. The lady has already said what her testimony was. It is for your Honor to pass on the weight of it.

The Court: She may answer.

[fol. 81] By Mr. LaMacchia:

Q. I asked you if it was a mistake.

A. It must be a mistake, because this was the book I referred to.

Q. Now, as I understand it, Russell Cantwell came to your door and rang the bell; is that true?

A. Yes.

Q. And you came downstairs and answered the door bell?

A. Yes.

Q. What did he say to you when you first opened the door?

A. He told me that he had these records with him, and he said the record explained the books that he was around with, and he had smaller pamphlets too, and he asked me if he could come in and play it and I told him he could not.

Q. And the reason why you told him that was that on a prior appearance——

A. I knew what the book was.

Q. And feeling somewhat aroused by the contents of the book, you made complaint to the sergeant; is that true?

A. I did.

Q. You felt that that was the proper move to make?

A. I did.

Q. As a good citizen you felt that the proper move was to notify the police?

A. Positively.

Q. But you didn't take it on yourself to inflict punishment on him?

A. Well, I suppose I was mad enough to. I think that is a pretty strong book against my religion.

Q. That is true, but if you felt that way why did you report it to the police?

A. I thought them the ones to report to.

Q. In differentiating your feelings between inflicting punishment on him and reporting to the police, why did you report to the police?

A. Because I thought it was the proper thing to do.

Mr. LaMacchia: That is all.

Redirect examination.

By Mr. Pickett:

Q. Did you see Russell or any of the other two after they came to your house on Cassius Street?

A. Yes, I did.

Q. Whom did you see?

A. I saw all of them.

Q. All of them similarly equipped with bag and phonograph?

A. Yes.

Q. What were they doing?

A. After the officers took Russell away, the mother came around the corner, and when she saw them putting them into the radio car, she ran back and got into the car on Cedar Street.

Q. Yes?

A. Then when they took them away and took the car away, [fol. 82] they arrested the father up near Howard Avenue.

Q. Were they going from house to house on Cassius Street?

A. Yes.

Q. You have lived there long enough to know that there are a good many Catholics on Cassius Street?

A. Yes.

Q. How many out of the entire block would you say were Catholics?

A. Well, I would say the whole street is Catholic with the exception of about fifteen or sixteen.

Q. That would be about how many Catholics on the street do you think? Forty or fifty?

A. There must be at least forty or fifty families.

Q. Altogether how many Catholics do you think there are on that block?

A. Well, I would say about fifty families; of course, the children, and so forth.

Q. Fifty families or individuals?

A. Yes.

Q. Individuals, you mean?

A. No, I wouldn't——

Q. Fifty persons?

A. Oh, no, I wouldn't say that; I would say maybe two or three hundred——

Q. Catholics?

A. (Continuing:) because some of those have large families.

Mr. Pickett: That is all.

Recross-examination.

By Mr. LaMacchia:

Q. Have you spoken to all the families on the street?

A. The majority of them.

Q. You all belong to St. Peter's Catholic Church?

A. Yes.

Q. Getting back to the time when Russell called at your house: He offered to sell you the book for twenty-five cents; is that true?

A. Yes.

Q. You didn't buy the book?

A. No.

Q. Did he give you a smaller book or pamphlet?
A. He gave me a little small pamphlet.
Q. You accepted it?
A. I did, but I tore it up when I got upstairs. I didn't even look at it.
Q. You didn't tear it up in front of him?
A. No.

Mr. LaMacchia: That is all.
Mr. Pickett: That is all.

GLADYS BARRY, called as a witness in behalf of the State, being first duly sworn by Mr. Stapleton testified as follows:

Direct examination.

By Mr. Pickett:

Q. Your name is Gladys Barry?
A. Yes, that is right.
Q. Where do you live?
A. 29 Cassius Street.
Q. Are you a married lady?
A. Right.
Q. How long have you lived on Cassius Street?
[fol. 83] A. Three years.
Q. Where have you been living the last few weeks?
A. Cassius Street.
Q. You have been staying there the last two or three weeks all the time?
A. Yes.
Q. So that you were living there on April 26 of this year?
A. Right.
Q. What is your religion, please?
A. Catholic.
Q. You have been a Catholic for a good many years?
A. Twenty years.
Q. You are a parishioner in St. Peter's Roman Catholic Church, on Kimberly Avenue?
A. Right.
Q. Have you a family?
A. Yes.
Q. Your husband and family are Catholics also?
A. Yes.

Q. And they attend that church?
A. Right.
Q. On April 26 did you see any of these three gentlemen who are in front of you?
A. Yes, the boy furthest from me.
Q. I beg your pardon?
A. The boy furthest from me.
Q. His name is Jesse Cantwell. Where did you see him on that day?
A. I was sitting on my porch and he came up to the porch.
Q. You will have to talk a little louder.
A I was sitting on the porch and he came up to the porch.
Q. Of your home?
A. Yes.
Q. Did he have anything with him at all?
A. Yes, a suitcase.
Q. You see these satchels, or whatever you call them, in front of you?
A. Yes, I believe he also had one of those.
Q. And these things that turn out to be phonographs?
A. That is right.
Q. About what time of day would you say that was?
A. Late in the afternoon.
Q. Did he say anything to you?
A. He asked me if I wanted to buy a book. I told him I wasn't interested.
Q. Did he show you the book?
A. He held up a book, but I couldn't describe it.
Q. Can you tell the color of it?
A. No.
Q. Well, as far as conversation was concerned, he asked you if you wanted to buy a book which he held up?
A. Yes.
Q. And you said that you weren't interested?
A. That is right.
Q. Was there anything else said?
A. No, I told him I wasn't interested.
Q. After he finished that talk with you, did you see where he went?
A. Yes, down the street from me.
Q. Did you notice whether he stopped at any houses?
A. He played a record further down the street.
Q. Whose house was that?
A. I couldn't tell you.

[fol. 84] Q. Do you know where Ganley's mother lives?

A. Further down the street.

Q. Than that?

A. Yes.

Q. He played one at a different place than where Ganley and Cafferty spoke about?

A. The same place. He only played one record on the street that I saw.

Q. I am trying to figure out whose house it was, whether the one that Ganley and Cafferty were at or another house?

A. It must have been there, because Ganley was standing there and Cafferty, so it must have been there.

Q. You saw him do that?

A. Yes, and then I went upstairs.

Q. I beg your pardon?

A. Then I went upstairs.

Q. Well, you live on what side of Cassius Street?

A. The right-hand side coming from Howard Avenue bridge. Beg pardon; the left-hand side coming from Howard Avenue bridge.

Q. I thought you may have moved since I saw you. That is the north side of the street. I will help you out. You know Mr. Rigby and the Cafferty family, don't you?

A. I never knew——

Q. You know where they live?

A. Yes.

Q. Which side of the street did they live on in regard to you?

A. On the opposite side.

Q. Did you see Jesse or any of these three go to any of the houses besides Mrs. Rigby's house or the one where Cafferty——

A. I didn't see him go to Mrs. Rigby's house.

Q. Did you see him go to other houses besides the one at which they played the record?

A. Yes, directly across the street, but there was no one home.

Q. They went there, anyway?

A. They went up on the porch.

Q. There was no sale there because nobody was home?

A. Nobody home.

Q. Did you see the father down there at any time?

A. No.

Q. You saw the police when they came there, didn't you?

A. Yes.

Q. Whom did you see first? What policeman?

A. If I can remember, it was the motorcycle.

Q. That is Mr. Leigh.

A. I don't know him.

Q. Well, he was here this morning.

A. I didn't recognize him.

Q. All right, the motorcycle officer, any way. What did you see him do?

A. He spoke to one of the men, a man that was across the street. I couldn't describe the man.

Q. You don't know who that was?

A. No, I just know that he had a suitcase.

[fol. 85] Q. Do you know whether he was one of the boys?

A. I don't know. I couldn't see that distance; my vision isn't good that distance.

Q. Did the one the policeman spoke to have one of these phonograph cases?

A. He had a phonograph that I could see.

Q. And what did the policeman do? Did he take him somewhere or did he just let him go?

A. The squad car came.

Q. I beg your pardon?

A. The squad car came, if that is what you call it.

Q. Then what happened?

A. They took him away.

Q. Did you see any of the others besides the one you just mentioned?

A. That is all.

Q. Well, when the police came to the street didn't you say to one of the men that the police were around there and that they had better make themselves scarce?

A. That was the boy I was talking to.

Mr. LaMacchia: I object to it.

Mr. Pickett: I withdraw it.

Mr. LaMacchia: I know that. You have been withdrawing it all the time, but you continually do it.

Mr. Pickett: You haven't objected. If you object I will stop here. I understand that he is finding fault with me and not with your Honor.

The Court: I think the fault he finds with you is well founded.

Mr. Pickett: I admit that and that is the reason why I withdraw the question, to save time.

The Court: I don't think you should suggest the answer.
Mr. Pickett: All right.

By Mr. Pickett:

Q. As a matter of fact, when the police came down the street and one of the men was sent away in the squad car, did you see either one of the other two on your side of the street?

A. Yes, the boy furthest from me was on my side of the street, but I couldn't recognize the one on the other side.

Q. And one on the other side?

A. Yes, as I said.

Q. Is Jesse the one who came to your house?

A. Yes, the young boy.

Q. Did you have any conversation with him then?

[fol. 86] A. That is the one I told you I was talking to.

Q. I understand that, but after the police had appeared on the scene, did you say anything further to Jesse about the police?

A. Yes, I said, "One of your buddies just got arrested across the street; you had better scram. I don't want any publicity in front of my house." That is all I said and I went upstairs.

Mr. Pickett: You can inquire.
Mr. LaMacchia: No questions.

Alice Hickey, called as a witness in behalf of the State, being first duly sworn by Mr. Stapleton, testified as follows:

Direct examination.

By Mr. Pickett:

Q. Your name is Alice Hickey?
A. Yes, sir.
Q. Where do you live?
A. 1151—I mean 151 Portsea Street.
Q. How old are you?
A. Eighteen.
Q. On April 26 of this year where did you live?
A. I lived on 12 Cassius Street.
Q. What number?
A. 12.

Q. Was that in the same house with Mrs. Rigby or in a different house?

A. The same house.

Q. You lived on what floor in that house?

A. The first floor.

Q. And Mrs. Rigby on the second floor, is that it?

A. Yes, sir.

Q. What is your religion?

A. Roman Catholic.

Q. You have been a Roman Catholic all your life?

A. Yes, sir.

Q. How many other members are there of your family?

A. Seven.

Q. You have a father and a mother?

A. Yes, sir.

Q. How many brothers or sisters?

A. Two brothers and two sisters.

Q. So the family altogether consists of eight persons, is that it?

A. Seven persons.

Q. All of them are Roman Catholics?

A. Yes, sir.

Q. How long did you live on Cassius Street?

A. About two years.

Q. All in the family lived there with you?

A. Yes, sir.

Q. And all are parishioners at St. Peter's Roman Catholic Church?

A. We were, but now we are at Sacred Heart.

Q. After you moved out of the parish and moved to Portsea Street, you went to Sacred Heart Church?

A. Yes.

Q. But you still remained a member of the Roman Catholic faith?

A. Yes.

Q. Are your brothers and sisters older or younger than you?

A. I have two older and two younger.

[fol. 87] Q. On April 26, while you were living at 12 Cassius Street, did you see any one of the three men who are before you?

A. Yes, sir, I saw the three of them, but Russell was at the house.

Q. Where did you see the three of them?

A. I saw Mr. Cantwell up the other end of the street.

Q. Mrs., you say?

A. Mr.

Q. You referred to him as Mr. Cantwell. Which one do you mean?

A. The father.

Q. Oh, the one in the middle?

A. Yes.

Q. Go ahead.

A. Then I saw Jesse Cantwell on the other side of the street.

Q. Yes?

A. And then Mrs. Cantwell came around the corner and she came back and got into the car.

Q. Did you see the one nearest to you there?

A. Yes, sir.

Q. So you saw all three of them on Cassius Street. What part of the day would you say that was?

A. Oh, it was about four o'clock in the afternoon.

Q. Now, what did you notice that they were doing?

A. Well, they were going from house to house, and they had these bags with a phonograph—a small bag like this (pointing).

Q. Did one of them come to your house?

A. Yes, sir, Russell.

Q. He is the one nearest to you?

A. Yes, sir.

Q. How did he make his presence known at your house?

A. Well, he rang our front-door bell, and I went out to the door.

Q. Now tell us what was said by Russell or by you at the time.

A. Well, Russell came—when I came out Russell said to me that he had a phonograph and he would like to come into the house and play it, but I told him he couldn't come in, because my father had been sick at the time. Then he told me he had a book there for twenty-five cents, so I said I didn't have any money, so he left me a smaller pamphlet.

Q. Did you see the book that he mentioned?

A. Yes, sir.

Q. Can you tell the color of it?

A. (The witness shook her head.)

Q. Did you notice the name of it? I will put the question that way.

A. I believe it was Riches.

Q. When you told him about not having any money, do you know what pamphlet he left with you?

A. Well, it was a small pamphlet and I just glanced at it. I tore it up.

Q. Would you be able to recognize it at all?

A. Yes, I believe I would.

Q. It was in English?

A. Yes, sir.

[fol. 88] Mr. Pickett: Will your Honor permit her to look through that, or shall I hand it to her?

Mr. LaMacchia: Does it make very much difference what pamphlet was left with her? We will agree that he left a pamphlet, if that is what he wants.

Mr. Pickett: Maybe she can tell what it was. I should like to call your Honor's attention to it.

By Mr. Pickett:

Q. Look through the bunch and see if you can tell me what the pamphlet was that he left with you. Some of them are written in Italian.

Mr. LaMacchia: We will agree that it was the Cure pamphlet. I just found that out.

Mr. Pickett: Yes, you can see why I was rather insistent that she pick it out. Cure seems to be the one I referred to. Now we have it that it was Cure he left with her.

By Mr. Pickett:

Q. Was that the last you saw of him?

A. Then I saw Officer Leigh come up to make the arrest.

Q. And take him away?

A. Well, the squad car came up there and they took Russell away and the father.

Q. How many did you see go away in the squad car?

A. Russell and the father.

Q. Where did the other, Jesse, disappear to?

A. Mr. Ganley took him up in his car.

Mr. Pickett: You can inquire.

Cross-examination.

By Mr. LaMacchia:

Q. I understand that your father was home sick at the time. Is that right?

A. Yes, sir.

Q. Were you taking care of him?

A. No, my mother was.

Q. You saw the three men on the street?

A. Yes, sir.

Q. Could you see Jesse go into a house?

A. Yes, I did.

Q. Did you see Russell come to your house?

A. Yes, sir.

Q. Do you know why the policeman arrested them?

A. Yes, sir.

Q. Who told you the reason?

[fol. 89] A. Well, I knew when the complaint was put in, because it was put in from our house.

Mr. Pickett: I didn't hear that.

Mr. LaMacchia: She said she heard the complaint from her house.

By Mr. LaMacchia:

Q. Mrs. Rigby called from your house?

A. Yes.

Q. Do you remember testifying in the City Court of New Haven?

A. Yes, sir.

Q. Do you remember testifying that the name of the book he wanted to sell you was Enemies?

A. No, sir, I do not.

Q. So if you did testify to the fact that it was Enemies, it must have been a mistake.

A. Yes, sir, it must have been.

Q. He left a pamphlet with you; is that true?

A. Yes, sir.

Q. You didn't say anything to him?

A. No, I did not.

Q. You didn't make any comments or anything?

A. No.

Q. When you told him that you weren't interested, he just went on his way; isn't that true?

A. Yes, sir.

Mr. LaMacchia: That is all.

Mr. Pickett: That is all. The State rests.

(The State rested.)

MOTION TO DISMISS

Mr. Moyle: At this time the defense moves to dismiss on both counts, for the reason that there is no proof of violation.

* * * * * * *

The Court: I will deny the motion for a discharge.

COLLOQUY

Mr. LaMacchia: The State having rested, the defense rests. We feel as though all the evidence necessary for a decision by this Court is in. We offer no further evidence.

Mr. Pickett: In order for the record to be correct: They pro forma renew their motions without further argument, and I make no further argument, so the matter is ready for your Honor's decision.

The Court: I find the three accused guilty. Do you want to be heard on the question of penalty?

Mr. Pickett: I don't care to be heard on the question of [fol. 90] penalty at all. I won't even tell your Honor what the penalty was in the lower court, because it is immaterial.

Mr. Moyle: Well, we have nothing to say.

The Court: The decision to be made will depend to a large extent on future action to be taken. If you gentlemen have made up your minds that you are going to take an appeal, that is one thing; if you are not that is another thing.

Mr. Moyle: I may say that we do intend to take an appeal.

The Court: Well, then, with that idea in mind I will fine each of the accused ten dollars and costs, with the further understanding, of course, that any practices will stop until the final determination of the appeal. Do I make myself clear on that?

Mr. Moyle: I don't believe that I quite understand that.

The Court: This fine is made with the understanding that during the time the appeal is pending there will not be further soliciting.

Mr. Moyle: You mean in this locality? As to the three defendants, yes.

The Court: Yes. We are only governed by our county jurisdiction.

Mr. Moyle: That is agreeable.

The Court: I find them guilty on both counts. Five dollars fine on one count and five on the other.

Reporter's Certificate to foregoing transcript omitted in printing.

Certified, Devlin, J., 1/27/39.

[fol. 91] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 92] IN SUPREME COURT OF ERRORS OF CONNECTICUT

NOTICE OF JUDGMENT—June 26, 1939

To the Clerk of the Supreme Court of Errors for New Haven County:

The Supreme Court of Errors has decided the following cases:

(1664)

STATE OF CONNECTICUT

v.

RUSSELL CANTWELL ET ALS.

Opinion by Hinman, J.

There is no error as to the conviction of all of the defendants on the third count, or that of the defendant Jesse Cantwell on the fifth count; there is error as to the defendants Newton and Russell Cantwell on the fifth count and a new trial is ordered thereon, as to them.

Maltbie, Chief Justice.

(Received 7/12/39.)

[fol. 93] IN SUPREME COURT OF ERRORS OF CONNECTICUT

STATE OF CONNECTICUT

v.

RUSSELL CANTWELL ET ALS.

New Haven County, May Term, 1939

Information charging the defendants with the crime of soliciting money for an alleged charitable cause without said cause having been approved by the secretary of the public welfare council in the third count and of breach of the peace in the fifth count, brought to the Court of Common Pleas for New Haven County, where demurrers to said counts were overruled (Pickett, J.) and the issues were tried to the court, Devlin, J.; judgment of guilty and appeal by the defendants. Error in part and new trial ordered.

Olin R. Moyle of the New York bar, and Otto H. Lomacchia, with whom, on the brief was Margaret E. Connors, for the appellants (defendants).

Edwin S. Pickett, prosecuting attorney, with whom was Luke H. Stapleton, for the appellee (the state).

OPINION

HINMAN, J.:

The defendants were tried and convicted upon the third and fifth counts of an information, the third charging them with violation of Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement, quoted in the footnote,[1] and the fifth they "did disturb the public

[1] "No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable, or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the county in which such person or organization is located unless such cause shall have been approved by the secretary of the public welfare counsel. Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a

transquil-ity by certain acts or conduct inciting to violence or tending to provoke or excite others * * * to break the peace." Assignments of error pertaining to correction of the finding having been abandoned, this appeal is to be determined upon the facts as found, without the resort to the evidence which is invited in brief and argument.

The defendants, a father (Newton) and his two minor sons, aged sixteen and eighteen years, are members of a religious organization known as Jehovah's Witnesses and possessed credentials attesting that they are ordained ministers to preach the gospel. Each was equipped with a bag containing books and pamphlets in several different languages, a portable phonograph, and a set of records each of which when played introduced and was a sales talk for one of the books. Their mode of operation was to go singly from house to house and ask permission to play one of the [fol. 94] records. "They would then ask the prospects to buy the book and if not they would accept any contribution they could make. If the prospect was in a position to do this a pamphlet was left on the condition it would be read." On April 26, 1938, they were working in this manner on Cassius Street, in New Haven, which is a thickly-settled neighborhood where about 90 per cent of the residents are Roman Catholics. A phonograph record giving a sales talk on one of the books, entitled "Enemies", was played in court and was an attack on the Catholic religion. None of the persons solicited were members of Jehovah's Witnesses; the defendants had not secured the permit provided by Section 6294 of the General Statutes and the trial court concluded that they were guilty of violating it. They claim that none of their activities come within the scope of this statute but that they consisted only of the distribution of printed books, pamphlets and periodicals. The finding which we have quoted, while somewhat ambiguous, sufficiently shows that in addition to the sale of the books and

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bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both."

the distribution of the pamphlets the defendants were also soliciting contributions or donations of money for an alleged religious cause, and thereby came within the purview of the statute. The claim that the evidence was not sufficient to bring them within the statute is not now open to consideration in view of the abandonment of attack upon the finding; in fact the quoted paragraph which we regard as decisive was not attacked by the assignments directed against the finding as made.

[fol. 95] The further contention that this statute, as applied to the acts of the defendants, is invalid under Sections 3, 5 and 6 of Article First of the Connecticut Constitution and the due process clause of the Fourteenth Amendment of the Constitution of the United States, appears to be based upon a claim that the statute, as app-ied to the defendants and their acts, abridges or denies freedom of religious profession and worship and liberty of speech and of the press. As already indicated, and as is plain from its terms, Section 6294 does not apply, and is not sought to be applied in this case, to the dissemination, either by sale or free distribution, of printed matter by the defendants. As the defendants recognize in their brief, the purpose of the statute is to protect the public against imposition in the matter of solicitations of funds purportedly for religious, charitable, or philanthropic causes. This is not, and is not claimed to be, objectionable on constitutional grounds. It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in Lovell v. City of Griffin, 303 U. S. 444, 58 Sup. Ct. 666, and Cincinnati v. Mosier, 14 Ohio Opinions 134, the first of which prohibited the distribution of literature of any kind, whether delivered free or sold, without a permit from the city manager, and the second required a license for peddlers selling goods carried by hand. The conviction of violation of Section 6294 is supported by the facts found and is not invalid on constitutional grounds.

The fifth count charges a breach of the peace by acts which are within the common-law definition of that offense. 11 C. J. S., p. 818; 2 Brill, Cyclopedia of Criminal Law, p. 1523; 8 Am. Jur., p. 834; 8 R. C. L., Section 305, page 284; 1 Bishop, Criminal Law (9th Ed.) Section 539. Section 6194

of the General Statutes does not define the crime known as breach of the peace, but merely specifies certain ways of [fol. 96] committing it. It may be committed in ways other than those so specified. From the time of its original enactment until the revision of 1821 the primary purpose of the statute was to provide for the recovery of damages by a person injured by specified acts directed against him and which are within the scope of those constituting a breach of the peace. General Statutes, Compilation of 1808, p. 545, Revision 1921, p, 162. The specification of such acts logically would be restricted to the types of wrongs which would inflict damages, without design to embrace all acts of breach of the peace. See State vs. Farrall, 29 Conn. 72; State v. Christie, 97 Vt. 461, 123 Atl. 849, 34 A. L. R. 577.

The defendants' contention is that the facts are insufficient to establish the offense which is charged. The finding includes the following pertinent facts: Jesse Cantwell stopped John Ganley and John Cafferty, both of whom are catholics, and receiving permission played the phonograph record "Enemies" which attacked that religion and church. On hearing it Ganley felt like hitting Cantwell and told him to take his bag and victrola and be on his way. If he had remained he might have received physical violence. Cafferty's mental reaction was to put Jesse off the street and he warned him that he had better get off before something happened to him. Russell Cantwell called at the home of Anna Rigby and offered to sell a book known as "Riches". She, already knowing the book and considering it a strong attack against her religion, was angered and complained to the police and "was mad enough to hit him if he did not go away". None of the other witnesses claimed to have any knowledge of the contents of the books other than what they heard from the phonograph record. There was no evidence that the defendants became offensive or entered into any arguments upon refusal to purchase the books.

The charge here is not, as the defendants seem to infer, a "solicitation" to commit crime, as in State v. Avery, 7 Conn. 266 (adultery), and State v. Schleifer, 99 Conn. 432, 121 Atl. 805 (murder, assault, etc.), and in State v. Quinlan, 86 N. J. L. 120, 91 Atl. 111, but provoking or exciting [fol. 97] others to break the peace. It is not necessary, as claimed, to show that other persons were actually provoked to the point of violence or disturbance of the peace. Bishop,

Op. Cit., Section 539; State v. Farrall, supra; State v. Warner, 34 Conn. 276, 279; Davis v. Burgess, 54 Mich. 514, 517, 20 N. W. 540; Delk v. Commonwealth, 166 Ky. 39, 45, 178 S. W. 1129, L. R. A. 1916B, 1117. Nor is a specific intent to provoke a breach of the peace essential; it is sufficient if the acts are such as tend to produce it. State vs. Shelby, 95 Minn. 65, 103 N. W. 725. The doing of acts or the use of language which, under circumstances of which the person is or should be aware, are calculated or likely to provoke another person or other persons to acts of immediate violence may constitute a breach of the peace. St. Louis, v. Slupsky, 254 Mo. 309, 318, 162 S. W. 155, 157, 49 L. R. A. (N. S.) 919; Holmes v. State, 135 Ark. 187, 189, 204 S. W. 846; Faulkner v. State, 166 Ga. 645, 665, 114 S. E. 193. The rule is as applicable where, instead of being directly spoken, the objectionable language is communicated, as here, by means of a victrola operated by the person accused, or by banner or placard as in West v. Commonwealth, 208 Ky. 735, 271 S. W. 1079. The effect or tendency of words or conduct depends largely upon the circumstances, and is a question of fact. State vs. Moser, 33 Ark. 140. It is apparent from the facts found that the playing for audition by loyal Catholics of a record violently attacking their religion and church could well be found to constitute the offense charged, and they warrant finding the defendant Jesse Cantwell guilty. As was observed in Delk v. Commonwealth, supra, 47, while the right to propogate religious views is not to be denied "one will not be permitted to commit a breach of the peace under the guise of preaching the gospel."

We are unable, however, to discover in the facts found sufficient justification for the conviction of the other two defendants upon this count. Aside from the one incident between Russell Cantwell and Anna Rigby, the most that the finding discloses, as to them in this connection, is a house [fol. 98] to house canvassing which is inadequate to constitute the offense charged, as well as apparently subject to the constitutional considerations advanced in Lovell v. City of Griffin, and Cincinnati v. Mosier, supra. As to the Rigby incident, the resentment entertained by her appears to have been engendered by prior acquaintance with the book of which, so far as the records shows, Cantwell was unaware, rather than anything offensive in the words or manner of

his offer to sell it to her. The foregoing considerations also support, as to these two defendants, the assignments of error in the admission and retention of excerpts from the books and pamphlets, but this evidence is extraneous to the facts supporting the charge as against the defendant Jesse Cantwell and could not have been prejudicial to him.

There is no error as to the conviction of all the defendants on the third count, or that of the defendant Jesse Cantwell on the fifth count; there is error as to the defendants Newton and Russell Cantwell on the fifth count and a new trial is ordered thereon, as to them.

In this opinion the other judges concurred except that of Maltbie, C. J., and Brown, J., dissented from so much of it as holds that the finding was sufficient to support the conviction of the accused upon the third count under the statute penalizing the solicitation of money or other valuable thing.

[fol. 99] IN SUPREME COURT OF ERRORS OF CONNECTICUT

STATE OF CONNECTICUT

vs.

NEWTON D. CANTWELL, JESSE L. CANTWELL, and RUSSELL D. CANTWELL, all of the Town of Woodbridge

On Appeal from the Court of Common Pleas for New Haven County, in New Haven

JUDGMENT

This appeal by the defendants claiming error in the process, record and judgment, and in the proceedings and decisions of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts, on file in this Court, was allowed by the Court of Common Pleas for New Haven County, on the twenty-first day of October, A. D. 1938, and came to this Court, at its term held at Hartford, on the first Tuesday in November, A. D. 1938, and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Court of Common Pleas for New Haven County, in New Haven, there is no error, as to the conviction of all the defendants on the third count, or that

of the def ndant Jesse Cantwell on the fifth count; there is error as to the defendants Newton and Russell Cantwell on the fifth count, and a new trial is ordered thereon, as to them; and that the appellee recover of the defendant Jesse Cantwell, its costs taxed at——

Date of judgment June 26, 1939.

By the Court,

William A. Bree, Clerk.

[fol. 100] In Supreme Court of Errors of Connecticut

[Title omitted]

Motion for Reargument—September 12, 1939

The defendants in the above entitled action respectfully request permission to reargue the matter for the following reasons:

1. The defendants should like to be heard on the question of whether Section 6294, General Statutes, Revision of 1930, as amended by Section 860D of the 1937 Supplement thereto, as construed and applied to the defendants is unconstitutional and void as being in conflict with the due process clause of the XIVth Amendment to the United States Constitution and with Sections 3, 5 and 6, of Article One of the Connecticut Constitution in the following respects to wit:

(a) It abridges and denies freedom of speech and freedom of press.

(b) It abridges and denies freedom of worship and of conscience and religious liberty.

2. The defendants would like further to be heard on the question of whether Section 6294, General Statutes, Revision of 1930, as amended by Section 860D of the 1937 Supplement thereto, is unconstitutional, void and discriminatory as applied to a bona fide religious society or a member thereof engaged in the sale or dissemination of religious matter because it vests in the secretary of the Public Welfare Council the right by his mere opinion, to determine if such cause is a religious cause and a bona fide object of charity or philanthrophy and conforms to reasonable standards of efficiency and integrity and it can thus be made the in-

strument of arbitrary suppression of free expression of religious views merely because of an opinion by said secretary of the Public Welfare Council that the affairs of said religious order are not conducted efficiently and do not meet with reasonable standards of efficiency.

3. The defendants should like to be fu her heard on the question as to whether Section 6294, General Statutes, Revision of 1930, as amended by Section 860D of the 1937 Supplement thereto, is unconstitutional and void as applied to one who is primarily engaged in and whose predominant activities are the sale and dissemination of religious literature, who, while attempting to sell or disseminate such literature, accepts a gratuity from a prospective purchaser of such literature.

[fol. 101] 4. The defendants should like to be further heard on the question of whether one who is primarily engaged in and whose predominant activity is the sale and dissemination of religious matter, who while engaged in the sale and dissemination of religious matter, accepts a gratuity, voluntarily given, by a prospective purchaser, is guilty of solicitation under Section 6294, General Statutes, Revision of 1930, as amended by Section 860D of the 1937 Supplement thereto, and whether as to such a person, said section is unconstitutional.

5. The defendants would like to be further heard on the question of whether the evidence and the finding of facts was sufficient to support the conviction of the accused upon the third count under the statute penalizing the solicitation of money or other valuable thing.

6. The defendant, Jesse Cantwell, would like further to be heard upon the question of whether he was guilty under the fifth count of the offense of breach of the peace or provoking a breach of the peace by exercising his constitutional right of freedom of press, conscience and worship of Almighty God in explaining to the people the book "Enemies" and urges as a reason for the right to reargue this question that since the argument of the present matter, the United States Supreme Court, in the decision of Hague v. C. I. O., et al., 59 Supreme Court, 954, has established certain legal principles which would prove that acts similar

to those of which said Jesse Cantwell was accused, do not constitute a breach of the peace or of provocation of breach of the peace.

Respectfully submitted,
Otto H. Lamacchia, Hayden C. Covington, (of the Texas Bar.), Attorneys for the Defendants.

ORDER DENYING MOTION FOR REARGUMENT

(Endorsed: "Per Curiam, Oct. 13, 1939. Motion denied. Certified; Maltbie, C. J.")

[fol. 102] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 103] [File endorsement omitted]

[fol. 104] UNITED STATES SUPREME COURT

[Title omitted]

ORDER ALLOWING APPEAL— Filed December 15, 1939

The appellants in the above entitled suit and cause and each of them having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled cause by the Supreme Court of Errors of the State of Connecticut on the 26th day of June 1939, which judgment became final on October 13, 1939 when order was made by per curiam opinion overruling motion for reargument and having presented and filed their petition for appeal, statement, assignments of error and prayer for reversal and [fol. 105] jurisdictional statement, all within ninety (90) days from said final judgment, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided,

It is now here ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of Errors of the State of Connecticut in the above entitled cause as provided by law, and

It is further ordered that the Clerk of the Supreme Court of Errors of the State of Connecticut shall prepare and certify a transcript of the record, proceedings and judgment in the above cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within thirty (30) days from date.

And it is further ordered that security for costs on appeal be fixed in the sum of five hundred ($500) Dollars.

Dated, Dec. 15, 1939.

W. M. Maltbie, Chief Justice of the Supreme Court of Errors of the State of Connecticut.

[fol. 106] [File endorsement omitted]

[fol. 107] UNITED STATES SUPREME COURT

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed December 15, 1939

Whereas appeals were jointly taken by appellants from convictions under third and fifth counts of the information;

Whereas on the 26th day of June, 1939, the Connecticut Supreme Court of Errors affirmed the convictions as to all appellants under the third count, affirmed the conviction as to Jesse Cantwell under the fifth count and reversed the conviction as to the other two appellants;

Whereas said judgment became final when the motion for reargument, duly and timely filed by appellants, was overruled and denied on the 13th day of October, 1939;

Whereas appellants have filed petition for appeal to the Supreme Court of the United States, assignments of error and prayer for reversal and jurisdictional statement with the Clerk of the Connecticut Supreme Court of Errors within ninety (90) days from October 13, 1939, the date of [fol. 108] final judgment overruling motion for reargument, and the Chief Justice of said Connecticut Court having signed order granting said appeal; and within five (5) days after said allowance of appeal copies of the petition for appeal, order allowing appeal, assignment of errors, jurisdictional statement, statement of points to be relied upon and statement directing attention of counsel for appellee-

respondent to provisions of paragraph 3 of Rule 12 of the Supreme Court of the United States, together with citation, having been duly served upon appellee-respondent's counsel;

Whereas appellants and respondent agree that one appeal bond herein in the amount of ($—) Dollars, said amount having been previously fixed by the aforesaid Chief Justice, may be jointly executed by them and filed with the Clerk of the Connecticut Supreme Court of Errors for approval;

It is agreed between the parties that as the parts of the record to be sent by the Clerk of the Connecticut Supreme Court of Errors to the Clerk of the United States Supreme Court to be filed and printed by the Clerk of the Supreme Court of the United States, the following shall be and are provided, to wit:

1) Record printed and now on file with the Connecticut Supreme Court of Errors.

2) Docket entry of judgment of Connecticut Supreme [fol. 109] Court of Errors rendered on June 26, 1939 and entered by the Clerk of said Court on July 12, 1939.

3) Opinion of the Connecticut Supreme Court of Errors.

4) Judgment.

5) Motion for reargument.

6) Per curiam order denying motion for reargument.

7) Petition for appeal to the Supreme Court of the United States.

8) Order allowing appeal.

9) Assignment of errors.

10) Prayer for reversal.

11) Statement as to jurisdiction.

12) Statement of points to be relied upon.

13) This stipulation.

Signed on this 15 day of December, 1939.

Hayden C. Covington, —— ——, Attorneys for Appellants. Edwin S. Pickett, —— ——, Attorneys for Appellee-Respondent.

[fols. 110-113] Bond on appeal for $500.00 approved and filed January 2, 1940; omitted in printing.

[fols. 114-116] Citation in usual form, filed Dec. 15, 1939, omitted in printing.

[fol. 116½] [File endorsement omitted]

[fol. 117] UNITED STATES SUPREME COURT

[Title omitted]

Petition for Appeal, Statement, Assignments of Error and Prayer for Reversal—Filed Dec. 15, 1939

PETITION FOR APPEAL

Considering themselves aggrieved by the final decision of the Supreme Court of Errors of the State of Connecticut in the above entitled cause, the appellants therein, Jesse Cantwell, Newton Cantwell, and Russell Cantwell, hereby pray that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

[fol. 118] STATEMENT

This case is one in which the validity of a statute of the State of Connecticut, to wit,

"Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement, namely,

"No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the county in which such person or organization is located unless such cause shall have been approved by the secretary of the public welfare council. Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may

be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both."

which statute was passed and approved by the Legislature of the State of Connecticut on —— —, —— and is drawn in question upon the ground that said statute is repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States. The final decision of the Supreme Court of Errors in the last resort in all causes in the State of Connecticut in which a decision could be had, is in favor of the validity of said statute. Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 [28 U. S. C. A., sec. [fol. 119] 354]), the petitioners respectfully show this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C. A., sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The said Supreme Court of Errors in the last resort in all causes in the State of Connecticut rendered its decision herein on the twenty-sixth day of June 1939, and since under the law of the State of Connecticut during the months of July and August it is not necessary to file a motion for rehearing or reargument within two weeks from the date when the decision was announced, the appellants took advantage of this limitation by duly filing with the clerk of the said Court in the county in which the judgment was rendered, a written notice of their intention to file such a motion for reargument in accordance with the provisions of Section 397 of the Connecticut Statutes relative to practice before the Supreme Court of Errors, and thereafter within the time and in the manner required by the statutes of the State of Connecticut, the appellants filed their motion for reargument with the clerk of the Supreme Court of Errors for the State of Connecticut, New Haven County, on the twelfth day of September, 1939, which said motion [fol. 120] for reargument was overruled and denied by the said Supreme Court of Errors of the State of Connecticut through its per curiam opinion on the thirteenth day of October, 1939, and thereby the Supreme Court of Errors of the State of Connecticut, in its decision herein on the

thirteenth day of October, 1939, and in said per curiam opinion and previous opinion affirmed the judgment in the Court of Common Pleas for New Haven County, State of Connecticut, upon the grounds set forth in the opinion theretofore rendered by Judge Devlin, Judge of the Court of Common Pleas for New Haven County, State of Connecticut. The opinion of the said Supreme Court of Errors in the last resort in all causes in the State of Connecticut has not yet been officially reported but is unofficially reported in Russell Cantwell et al. v. State of Connecticut, 8 Atl. (2d) 533-7. The order of affirmance by the Supreme Court of Errors of the State of Connecticut entered in the office of the Clerk of said Court on June 26, 1939 became a final judgment on October 13, 1939, the date of overruling of said motion for rehearing.

ASSIGNMENTS OF ERROR

Now come the appellants in the above cause and file herewith, together with their petition for appeal, assignments of error and say that there are errors committed by the Court below in the record and proceedings of the above entitled case, and for the purpose of having the same re- [fol. 121] viewed in the United States Supreme Court, make the following assignments:

First. The Supreme Court of Errors of the State of Connecticut committed reversible error in failing to hold that Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement, quoted in the footnote of the Opinion of said Court, as construed and applied to the appellants was void by reason of the fact that it unreasonably and unlawfully abridges and denies appellants freedom of speech and freedom of press in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Second. The Supreme Court of Errors of the State of Connecticut committed reversible error in failing to hold that Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement, quoted in the footnote of the Opinion of said Court, as construed and applied to the appellants was void by reason of the fact that it unreasonably and unlawfully abridges and denies to appellants

freedom to worship Almighty God, Jehovah, and freedom of conscience, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Third. The Supreme Court of Errors of the State of Connecticut committed reversible error in failing to hold that Section 6294 of the General Statutes as amended by [fol. 122] Section 860d of the 1937 Supplement, as construed and applied to the appellants is not a valid exercise of the police power.

Fourth. The Supreme Court of Errors of the State of Connecticut committed reversible error in failing to hold that the appellant Jesse Cantwell was not guilty under the fifth count of the offense of provoking a breach of the peace by exercising his constitutionally secured right of freedom of press, of conscience and freedom to worship Almighty God, in explaining to people at their homes the book "Enemies".

Fifth. The Supreme Court of Errors of the State of Connecticut committed reversible error in failing to hold that the evidence and fact findings of the trial court did not show appellants to be guilty of a violation of Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement.

Sixth. The Supreme Court of Errors of the State of Connecticut committed reversible error in failing to hold that the taking of money by the appellants at the time of delivering to some persons literature explaining the purposes of Almighty God as written in the Bible was not solicitation of money within the meaning of the Statute, Section 6294 of General Statutes as amended by Section 860d of 1937 Supplement.

Seventh. The Supreme Court of Errors of the State of [fol. 123] Connecticut committed reversible error in failing to hold that the act of appellant Jesse Cantwell in stopping John Ganley and John Cafferty, both of whom are Catholics, and playing a phonograph record entitled "Enemies", which attacked, according to them and the Supreme Court of Errors, that religion and church, was insufficient to establish the offense of breach of the peace as charged under the fifth count, under Section 6194 of the General Statutes.

Eighth. The Supreme Court of Errors of the State of Connecticut committed reversible error in failing to hold that there could be no common law breach of the peace by Jesse Cantwell because said crime is not defined in the statutes, and since Section 6194 specifies certain ways of committing the offense of breach of the peace it necessarily excluded all others.

Ninth. The Supreme Court of Errors of the State of Connecticut committed reversible error in failing to hold that Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement, insofar as it declares "from other than a member of the organization for whose benefit such person is soliciting, or within the county in which such person or organization is located", unlawfully discriminates against appellants and thereby denies to them the equal protection of the laws and deprives appellants of their liberty and property without due process of law in [fol. 124] violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

PRAYER FOR REVERSAL

For and on account of the above errors the appellants, Jesse Cantwell, Newton Cantwell, and Russell Cantwell, pray that the said judgment of the Supreme Court of Errors of the State of Connecticut hereinbefore described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellants, and for their costs.

Otto H. La Macchia, Hayden C. Covington, Attorneys for and of Counsel for Appellants.

[fols. 125-26] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 127] UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON—Filed January 11, 1940

Come now appellants in the above-entitled cause and state that the points upon which they intend to rely in this Court in this case are as follows:

Point 1. The statute of the State of Connecticut, to wit, Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement, as construed and applied to appellants is unconstitutional and void in that it unreasonably and unlawfully abridges and denies appellants freedom to worship Almighty God, Jehovah, and freedom of conscience, freedom of speech and freedom of press, in contravention of Section 1 of the Fourteenth Amendment to the Federal Constitution.

Point 2. The statute aforementioned is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment to the Federal Constitution in that as construed and applied it deprives appellants of liberty without due process of [fol. 128] law.

Point 3. The statute aforementioned as construed and applied to appellants is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment to the Federal Constitution in that it denies the appellants the equal protection of the laws.

Point 4. The statute aforementioned, insofar as it declares

"* * * from other than a member of the organization for whose benefit such person is soliciting, or within the county in which such person or organization is located,"

as construed and applied to appellants unlawfully and wrongfully discriminates against appellants and thereby denies to them the equal protection of the laws and deprives them of their liberty and property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution.

Point 5. The Connecticut Supreme Court of Errors erred in ruling that the aforementioned statute as construed and applied to appellants is a constitutional and valid exercise of police power.

Point 6. The Connecticut Supreme Court of Errors erred in ruling that the evidence and fact findings of the trial court showed appellants to be guilty of a violation of the aforementioned statute.

Point 7. The Connecticut Supreme Court of Errors erred [fol. 129] in ruling that the taking of money by appellants

at the time of delivering to some persons printed literature explaining the purposes of Almighty God as written in the Bible was solicitation of money within the meaning of the aforementioned statute.

Point 8. The statute of the State of Connecticut, to wit, Section 6194 of the General Statutes, as construed and applied to appellant Jesse Cantwell is unconstitutional and void in that it unreasonably and unlawfully abridges and denies said appellant's freedom to worship Almighty God, freedom of conscience, freedom of speech and freedom of press, in contravention of Section 1 of the Fourteenth Amendment to the Federal Constitution.

Point 9. The Connecticut Supreme Court of Errors erred in ruling that the evidence and fact findings of the trial court justified that court in adjudging appellant Jesse Cantwell guilty of committing the offense of breach of the peace in violation of the aforementioned statute, Section 6194 of the General Statutes of Connecticut.

Hayden C. Covington, Otto H. La Macchia, Attorneys for Appellants.

I, —— ——, of —— , attorneys of record for appellee-respondent, hereby acknowledge due and timely service [fol. 130] of the above Statement of Points to Be Relied Upon by appellants in the Supreme Court of the United States.

Dated December 15, 1939.

Edwin S. Pickett, Counsel for Appellee-Respondent.

[fol. 130½] [File endorsement omitted.]

[fol. 131] Supreme Court of the United States

Order—February 26, 1940

Appeal from the Supreme Court of Errors of the State of Connecticut.

With respect to the appeal of all appellants from the judgment of the Supreme Court affirming the judgment of conviction on the third count of the information, probable

jurisdiction is noted. The appeal of Jesse Cantwell from the judgment of the Supreme Court affirming the judgment of conviction on the fifth count is dismissed for want of jurisdiction. Section 237 (a), Judicial Code, as amended by the Act of February 13, 1925, (43 Stat. 936, 937). Treating the papers where on that appeal was allowed as a petition for writ of certiorari as required by Section 237 (c) of the Judicial Code (43 Stat. 936, 938), certiorari is granted.

[Endorsed on cover:] File No. 44,039, Connecticut Supreme Court of Errors, Term No. 632, Jesse Cantwell, Newton Cantwell and Russell Cantwell, Appellants, vs. The State of Connecticut. Filed January 11, 1940. Term No. 632, O. T. 1939.

(2)

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CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 632

JESSE CANTWELL, NEWTON CANTWELL AND RUSSELL CANTWELL,

Appellants,

vs.

THE STATE OF CONNECTICUT

APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

STATEMENT AS TO JURISDICTION

HAYDEN C. COVINGTON,
OTTO H. LA MACCHIA,
Counsel for Appellants.

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Connecticut General Statutes:
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Section 6294, as amended by Section 860d of the Connecticut Public Acts 1937 (page 490) 2
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 632

JESSE CANTWELL, NEWTON CANTWELL AND RUSSELL CANTWELL,

Appellants,

vs.

STATE OF CONNECTICUT,

Respondent

APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

JURISDICTIONAL STATEMENT

Statute Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 USCA 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in

any case which under prior statute could be received as a matter of right on writ of error.

Connecticut Statute Drawn in Question

The statute, the constitutionality and validity of which as construed and applied to appellants is here drawn in question, is Section 6294 of Connecticut General Statutes, Revision of 1930 (pages 1935, 1936), as amended by Section 860d of the Connecticut Public Acts 1937 (page 490), and which statute reads as follows:

> "No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the county in which such person or organization is located unless such cause shall have been approved by the secretary of the public welfare council. Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both."

The Connecticut Supreme Court of Errors and the courts below held that the statute was not unconstitutional and that it did not abridge freedom of speech and press and freedom to worship Almighty God, in violation of the Fourteenth Amendment to the United States Constitution. Accordingly, that court sustained the statute's application to appellants' acts and decided in favor of validity of the statute and held it to be constitutional as applied to appellants.

Timeliness

The judgment of the Connecticut Supreme Court of Errors was entered on June 26, 1939 (Record p. 99). The opinion of that court was delivered on the same date and appears in the Record, p. 93 et seq. Notice in writing of appellants' intention to present motion for reargument was duly filed. On September 12, 1939 appellants duly and timely filed their motion for reargument (R. pp. 100-101). The motion for reargument was overruled and denied October 13, 1939 (R. p. 101). Thereby the judgment of the Connecticut Supreme Court of Errors as rendered and entered on June 26, 1939 became final as against appellants on October 13, 1939. The petition for appeal is duly filed and presented within ninety (90) days from such date to this Court and is therefore timely.

Statement of Nature of Case

Appellants, a father (Newton Cantwell) and his two minor sons (Jesse and Russell) aged sixteen and eighteen years, are Jehovah's witnesses. Each bore credentials attesting that the Watch Tower Bible and Tract Society was represented by them and that each of them is an ordained minister of Almighty God to preach the gospel of His Kingdom under Christ Jesus. Each was equipped with a bag containing books and pamphlets in several different languages, a portable phonograph, and a set of disk records, which records when played introduced and described the literature containing explanations of the purposes and prophecies of Almighty God written in the Bible. The way appellants preached the gospel of God's kingdom was to go singly from house to house, tendering to each householder opportunity to hear the playing of a record. Thereupon the preacher would invite the householder to receive one or more of the books or pamphlets and to contribute a small

sum to aid in printing and distributing more like literature; and whenever a householder was not in position to contribute, a pamphlet was left, or a book, on condition that it would be read.

On April 26, 1938, appellants were preaching in this manner on Cassius Street in New Haven, that being a thickly populated area where, according to the court below, about ninety per cent of the residents are Roman Catholics (R. p. 94). The above facts were found by the trial court (R. pp. 22-25). The method of introducing the prospect to the books was by phonograph record entitled "Enemies", which was played in court and every word of which disk-record appears of record (R. p. 43-45). Although the Catholic Church was not mentioned in that phonographic record, the Supreme Court of Errors held that its presentation was an attack on the Catholic Church (R. p. 94).

By informations, each containing five counts, appellants severally were charged with violating, among other things, Section 6294 of Connecticut General Statutes, as amended by Section 860d of the 1937 Supplement quoted above (under "Connecticut Statute Drawn in Question" (and in the footnote of the opinion of the Supreme Court of Errors. (See Appendix A.) This offense was charged in the third count. Under the fifth count the State contended that the act of presenting this literature containing subject matter which shocked the religious susceptibilities of the complaining witnesses constituted a breach of the peace or was conduct inciting a breach of the peace (R. p. 1-12).

Demurrers to all five counts were filed by appellants and were overruled as to the third and fifth counts and sustained as to all other counts (R. pp. 15-16). The case was tried to the court without a jury and after hearing evidence, on September 23, 1938, all of the appellants, who were jointly tried by agreement, were convicted of violating the third and fifth counts and fined five ($5.00) dollars on each of said

counts. Costs were taxed against Newton Cantwell, $55.80; and $30.07 costs against each of the other two appellants. All were ordered to stand committed until judgment should be complied with (R. pp. 17-19).

On October 20, 1938, appellants by proper instrument duly and timely appealed from the convictions to the Supreme Court of Errors (R. p. 19). It was stipulated that the cases on appeal would be consolidated and reviewed on the one record (R. p. 20).

Substantial *Federal questions* attacking the validity of the statutes were raised in the trial court. They were first raised by demurrer to the third and fifth counts of the informations, on the grounds that Sections 6194, 6294, 6066 and 6244 of Connecticut Statutes are invalid in that each of said statutes unreasonably restricts and denies freedom of speech, freedom of press and freedom to worship Almighty God, as to appellants. (See points 3, 4, 5 and 6 of demurrer, Record pp. 13-14.) These points as to said statutes were overruled by the court. (See Memorandum on Demurrer, Record pp. 15-16.) As grounds for moving for judgment in their behalf appellants, at conclusion of the evidence, made the following claims of law:

That Section 6294 of Connecticut General Statutes was contrary to Article 1, Sections 3, 5 and 6 of the Connecticut Constitution and to the "due process" clause of the Fourteenth Amendment to the United States Constitution, in that as applied it unduly restricts and denies freedom of speech, freedom of press and freedom to worship Almighty God (R. pp. 29-30).

These points of law were overruled by the trial court. (See Record p. 26, Section II, paragraphs 1, 2 and 3.)

These *Federal questions* were carried forward and urged in the assignments of error which were presented to the Supreme Court of Errors in the time and manner required

by statute. (See Record pp. 30-31, Assignment of Errors, paragraph 8.)

The Supreme Court of Errors passed upon each of said *Federal questions* or assignments attacking the validity of the statutes as applied to appellants, and held the statutes valid and constitutional as so applied and found that they did not violate the Fourteenth Amendment to the United States Constitution. (See Opinion, Appendix A.) That court said:

> "The further contention that this statute, as applied to the acts of the defendants, is invalid under Secs. 3, 5 and 6 of Article First of the Connecticut Constitution and the due process clause of the Fourteenth Amendment of the Constitution of the United States, appears to be based upon a claim that the statute, as applied to the defendants and their acts, abridges or denies freedom of religious profession and worship and liberty of speech and of the press. * * * It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in *Lovell* v. *City of Griffin*, 303 U. S. 444, * * * and *Cincinnati* v. *Mosier*, 14 Ohio Opinions 134 * * * The conviction of violation of Sec. 6294 is supported by the facts found and is not invalid on constitutional grounds."

The Supreme Court of Errors set aside the conviction of Russell Cantwell and Newton Cantwell under the fifth count charging 'inciting a breach of the peace' but sustained the conviction of Jesse Cantwell under such count five which assessed a fine and costs.

The Supreme Court of Errors sustained the conviction of each of the three defendants under the third count charg-

ing a violation of Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement, and affirmed the judgment of the trial court assessing a fine and costs as to each defendant. (R. p. 99.)

The only ground relied upon by the Supreme Court of Errors and the trial court for convicting the defendant Jesse Cantwell under the fifth count was, as stated by the Supreme Court of Errors, to wit:

> "Jesse Cantwell stopped John Canley and John Cafferty, both of whom are Catholics, and receiving permission played the phonograph record 'Enemies' which attacked that religion and church. On hearing it Ganley felt like hitting Cantwell and told him to take his bag and victrola and be on his way. If he had remained, he might have received physical violence. Cafferty's mental reaction was to put Jesse off the street and he warned him that he had better get off before something happened to him. * * * It is apparent from the facts found that the playing for audition by loyal Catholics of a record violently attacking their religion and church could well be found to constitute the offense charged, and they warrant finding the defendant Jesse Cantwell guilty. * * *"

There was no evidence that Jesse Cantwell knew in advance that these men were Catholics. There is no evidence that he talked loudly or boistrously or otherwise disturbed the peace. There was no disturbance of the 'public peace'. The trial court found, concerning his conduct, as follows:

> "21. On the same day Jesse Cantwell stopped John Ganley and John Cafferty on Cassius Street and receiving permission played the record 'Enemies'. After playing the record he showed them the book 'Enemies', stating that if they wanted to contribute toward the organization they could, or if they were firm believers, they could have the book for nothing.

"27. There was no evidence that the appellants became offensive or entered into any arguments upon refusal to contribute for the purchase of the books." (R. p. 25.)

In the motion for reargument the appellants each complained of the judgment of the Supreme Court of Errors for and on account of each of the grounds set forth in the assignments of error contained in the petition for appeal to the United States Supreme Court herein. (R. pp. 100-101.)

Grounds and Decisions Showing Substantial Federal Questions

Appellants' contentions herein are that the statute drawn in question, as applied to their activities involved herein, is void in that it

A) abridges the freedom to worship Almighty God and freedom of conscience secured to all persons by the "due process" clause of the Fourteenth Amendment to the Federal Constitution; and

B) abridges the freedom of speech adn of the press secured to all persons by the "due process" clause of the Fourteenth Amendment to the Federal Constitution.

A

The statute in question, the validity of which is sustained by the state court, as applied to appellants deprives them of their right of freedom to worship Almighty God and freedom of conscience, in contravention of the "due process" clause of the Fourteenth Amendment to the Federal Constitution.

"Liberty" as safeguarded for all persons by the Fourteenth Amendment against abridgment by a state includes not only the right of one to be free from physical restraint but also fully justifies his free exercise and enjoyment of

rights which the Congress as well as a state or any lesser governing unit of this land's free men is *constitutionally estopped from infringing.*

Watson v. *Jones,* 80 U. S. 679;
Reynolds v. *United States,* 98 U. S. 145;
Davis v. *Beason,* 133 U. S. 333, 342;
Holy Trinity Church v. *United States,* 143 U. S. 457, 459;
Allgeyer v. *Louisiana,* 165 U. S. 578, 589;
Idaho v. *Morris,* 155 Pac. 296;
Meyer v. *Nebraska,* 262 U. S. 390;
U. S. v. *Macintosh,* 283 U. S. 605, 634;
Hamilton v. *Regents,* 293 U. S. 245;
Thomas v. *City of Atlanta,* 59 Ga. App. 520, 1 S. E. 2d 592;
Weiss v. *District Board et al.,* 76 Wis. 177, 212;
Cincinnati v. *Mosier,* 61 Ohio App. 81;
Gobitis v. *Minersville School Dist. et al.,* 21 F. Supp. 581; 24 F. Supp. 271; affirmed November 10, 1039, C. C. A. (3).

The holding of the court below that

> "* * * There is no error as to the conviction of all the defendants on the third count"
> "* * * that this statute, as applied to the acts of the defendants, is invalid under * * * the due process clause of the Fourteenth Amendment * * * [and] abridges or denies freedom of religious profession and worship"

in itself raises a substantial federal question affecting appellants' constitutionally safeguarded liberty to worship Almighty God and freedom of conscience.

The Petition for Appeal herein ought properly to be granted by this Court because the essential privilege of every person who resides within the jurisdiction of the United States of America to worship Almighty God in ac-

cordance with His written law and the conscientious understanding held by the person concerning the Maker's requirements prescribed in that law, has been wrongfully and unlawfully denied to appellants through the judgment of the courts below.

Almighty God is formally called upon continually in the high courts of this land, including this Court.

From the foundation of the United States of America it has been recognized as a "Christian nation"; which means that the inhabitants try to follow the lead of Christ Jesus, the Son of the Almighty One whose name alone is Jehovah.

The Lord Jesus Christ always obeys the law of His Father.

All followers of Christ Jesus are duty-bound likewise to obey the law of Jehovah.—See Psalm 40:8; 1 Peter 2:21; Deuteronomy 11:27.

Each of the appellants is an ordained minister of Almighty God to preach the gospel of God's kingdom under Christ Jesus; each is wholly consecrated and devoted to the service of Almighty God under the leadership of His Son. For any of the appellants willingly to disobey the commandments of Almighty God would mean destruction for such disobedient one as he sincerely and conscientiously believes.

To worship Almighty God means to obey His commandments, and therefore to serve Him as commanded by His law. The words of Christ Jesus are, "Thou shalt worship the Lord thy God, and him only shalt thou serve." (Matthew 4:10) "God is a Spirit; and they that worship him must worship him in spirit and in truth."—John 4:24.

"Worship" according to Black's Law Dictionary is the offering of honor and adoration to the Divine Being.

In *Weiss* v. *District Board et al.*, 76 Wis. 177 (212), the court says that worship includes making Jehovah the object of supreme affection and *rendering to Him supreme obedience*.

At the time of their arrest each of the appellants was actively worshiping Almighty God in spirit and in truth. Each of them was conducting himself strictly in obedience to God's commandments and in harmony with their conscientious belief concerning their Maker's requirements of them. Following are some of the commandments of Almighty God which the follower of Christ Jesus must obey:

"Ye are my witnesses, saith the Lord, that I am God."—Isaiah 43:10-12.

"The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."—Isaiah 61:1, 2.

These texts apply to all followers of Christ Jesus.

To all such also the following commandments by the Lord are mandatory:

"This gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." (Matthew 24:14) "Go ye into all the world, and preach the gospel to every creature."—Mark 16:15.

For the benefit of all upright persons, and with all good conscience, appellants were obeying God's commandments by presenting to the people at their respective homes the message of God's Word, tendering such message in printed and phonographic form and inviting householders to read and/or hear the same quietly in their own homes. If any thus approached declined to hear, appellants quietly and promptly passed on. In no way were they violating the law of morality or of property, nor did they act so as to infringe on personal rights, nor were their acts inimical to the safety of the state.

In going from house to house with the gospel message and thus worshiping Almighty God according to His written law and appellants' conscientious understanding of its mandate to them they were following exactly the example set by Jesus Christ and His apostles. Concerning Him it is written: "He went round about the villages, teaching." (Mark 6:6) "He went round about the villages and every city, preaching and showing the glad tidings of the kingdom of God; and the twelve were with him."—Luke 8:1.

Preaching from house to house was the method Jesus told His apostles to use. "And, as ye go, preach, saying, The kingdom of heaven is at hand. And when ye come into a house, salute it. And if the house be worthy, let your peace come upon it; but if it be not worthy, let your peace return to you. And whosoever shall not receive you, nor hear your words, when ye depart out of that house or city, shake off the dust of your feet."—Matthew 10:7, 12-14.

The apostles taught publicly by going "from house to house".—See Acts 20:20.

Thus also appellants were worshiping Almighty God, Jehovah, according to the God-given commandment and in conformity with the dictates of their conscience, and were so doing within the bounds of the State of Connecticut, the Constitution of which state secures to every person that right against abridgment by any.

It is not within the power or authority of the State of Connecticut, or of any municipality thereof, by legislative or other means to abridge any person's right freely, conscientiously and exclusively to obey Almighty God.

Human creatures or human powers cannot set aside the Almighty Creator's law nor prevent any creature's conscientious and exclusive obedience to the law of Almighty God.

"No external authority is to place itself between the finite being and the Infinite when the former is seeking to render the homage that is due, and in a mode which commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."

Cooley, Constitutional Limitations, 8th ed., page 968.

Supreme

Almighty God Jehovah is supreme.

All who live must depend upon Him and obey Him. He is "the fountain of life". (Psalm 36:9) One who would live must obey God's law. (John 17:3) "The law of the Lord is perfect, * * * The statutes of the Lord are right, * * * the commandment of the Lord is pure."—Psalm 19:7, 8.

When in ancient times the apostles of Jesus Christ were haled into court, charged with preaching the gospel from door to door contrary to whims of certain governing officers, the accused answered: "We ought to obey God rather than men." (See Acts 5:17-42) According to Holy Writ, those officers then "commanded that they should not speak in the name of Jesus, and let them go". The disciples positively refused, however, to heed that command of men. Instead, they deliberately chose to resume acting in obedience to the command of God; and hence we read that "*daily* in the temple, and in *every house*, they *ceased not* to teach and preach Jesus Christ." (Acts 5:40-42) That same rule of the Almighty God every true follower of Jesus Christ boldly and joyfully obeys today.

Misuse of legislative devices to prohibit or subjugate to human control any activity such as that performed by appellants in conscientious obedience to the Creator's written mandates can be properly seen only as an attempt to 'frame mischief by law'.—Psalm 94:20.

Well spoken words are Mr. Justice Brandeis' as to efforts of states to deprive individuals of constitutionally secured rights such as are here in jeopardy:

> "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding."
>
> *Olmstead* v. *United States*, 277 U. S. 479. Dissenting opinion.)

By the foregoing it conclusively appears that there was clearly raised and presented the question of freedom to worship Almighty God, secured by the Federal Constitution against abridgment and in this case abridged by application of a state statute; and therefore this Court has jurisdiction on that ground.

B

The statute in question, the validity of which is sustained by the state court, as applied to appellants abridges the rights of freedom of speech and freedom of press and is therefore repugnant to the "due process" clause of the Fourteenth Amendment to the Federal Constitution.

Here is presented a question of utmost gravity and importance that goes to the core of the unalienable right of every inhabitant of this "land of liberty" to impart and to acquire information affecting his associates' or his own common interests.

The judgment of the court below held that the statute:

> "* * * does not apply, and is not sought to be applied in this case, to the dissemination, either by sale or free distribution, of printed matter * * * For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in Lovell *v.* City of Griffin, 303 U. S. 444, * * * and

Cincinnati *v.* Mosier, 14 Ohio Opinions 134, the first of which prohibited the distribution of literature of any kind, whether delivered free or sold, without a permit from the city manager, and the second required a license for peddlers selling goods carried by hand. The conviction of violation of Sec. 6294 is supported by the facts found and is not invalid on constitutional grounds."

Thus, undeniably, a substantial federal question is squarely introduced.

The statute here involved is not a valid exercise of police power as applied to appellants. Holding contrariwise, the court below has stumbled in its attempt to perform its 'delicate and difficult task of weighing the circumstances and appraising the substantiality of the reasons advanced in support of the regulation' by means of said statute of appellants' free exercise and enjoyment of constitutionally secured *Federal-citizen* rights.

Schneider v. *Town of Irvington*, — U. S. — (No. 11, October Term 1939, decided November 22, 1939).
Hague v. *C. I. O. et al.*, 306 U. S. 624.
Lovell v. *City of Griffin*, 303 U. S. 444.
Herndon v. *Lowry*, 301 U. S. 242.
Grosjean v. *American Press Co.*, 297 U. S. 242.
Near v. *Minnesota*, 283 U. S. 697, 707.
Gitlow v. *New York*, 268 U. S. 652, 666.

The judgment of the court below that

"The conviction of violation of Sec. 6294 * * * is not invalid on constitutional grounds"[4]

for the reason that

"the purpose of the statute is to protect the public against imposition in the matter of solicitation of funds purportedly for religious, charitable, or philanthropic causes"

and that

> "It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature."

constitutes, obviously and undisputably, judicial condonement of unconstitutional infringement of inalienable fundamental rights lawfully exercised by appellants, and which abridgement, under color of legislative mandate, the courts below "should have been astute to examine, weigh and appraise" with due regard for both the definitive rulings of this Court and the substantiality of the reasons advanced in support of the regulation (by means of said statute) of appellants' exercise of their rights constitutionally protected against invasion by a state.

Schneider v. *Town of Irvington, supra,* and cases therein cited.

The state court's holding in favor of validity of the statute as applied to appellants' activities which that court in its opinion attempts to severalize is clearly questionable as effecting abridgement of rights protected under the "due process" and "equal protection" clauses of the Fourteenth Amendment.

Yick Wo v. *Hopkins*, 118 U. S. 356.
State of Washington v. *Roberge*, 278 U. S. 116.
Bent v. *The State of West Virginia*, 129 U. S. 114.

Solely because the substance of the printed information disseminated is either novel to some minds or apt to be offensive or even to shock their religious susceptibilities is not a sufficient or substantial ground for invoking police power to deprive the distributor of his right of freedom of press and speech. None of the justifications for denial of this right exist in the present case.

Near v. *Minnesota, supra.*

In the case of *Dearborn Publishing Co.* v. *Fitzgerald*, 271.F. 479, it was held that the fact that the message was offensive to others or might incite them to commit acts of violence was no ground for denying the constitutional right. In that case the court said:

> "If it be assumed that the article might tend to excite others to breaches of the peace the reply is plain. It is the duty of all officials charged with preserving order and peace to suppress firmly and promptly all persons guilty of disturbing it, and *not forbid* innocent persons to exercise their lawful and equal rights. * * * If defendants' actions were sustained, the constitutional liberty of every citizen freely to speak, write and publish his sentiments on all subjects, being responsible only for abuse of that right, would be placed at the mercy of every public official who for the moment was clothed with authority to preserve the public peace and the right to a free press thus destroyed * * *"

In the foregoing opinion the court quotes from *Epoch P. Co.* v. *Davis*, 19 Ohio (NP) (NS) 465, as follows:

> "Will the exhibition of this photoplay have a tendency to provoke a breach of the peace? Certainly so far as law abiding citizens are concerned such a tendency does not exist and cannot be seen. * * * To admit that this photoplay tends to provoke a breach of the peace is to confess that people of the African descent are not law abiding citizens. This I am not willing to admit because it would be uncalled for slander upon these people."

In *United States* v. *Schwimmer*, 279 U. S. 644, 654, Mr. Justice Holmes concerning this constitutional right said:

> "* * * If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought we hate."

In two recent opinions this Court has held that legislation similar to the Connecticut statute here assailed and as applied to Jehovah's Witnesses elsewhere acting in like manner as did appellants herein was unconstitutional and void as depriving Jehovah's Witnesses and persons similarly situated of rights constitutionally secured with respect to freedom of speech and press.

Schneider v. *Town of Irvington, supra;*
Lovell v. *City of Griffin, supra.*

This Court's opinion in the *Schneider* case, *supra,* had not been delivered at the time that the Connecticut Supreme Court of Errors ruled upon the case of appellants herein, but that court attempted to distinguish the *Lovell* case, *supra,* on the ground that appellants' acceptance of money contributions when delivering literature from house to house brought them within the statute in question and that said statute, as applied to them, was not invalid as being repugnant to the Fourteenth Amendment to the Federal Constitution.

In other words, the Connecticut court in the last resort in all causes held that acceptance of money contributions by one while engaging in *press activity* removes such a person from protection constitutionally secured. That court held that such was the law as applied to appellants even though acceptance by them of contributions was purely incidental to the principal and more important branch of their activity, namely, dissemination of Bible truths in printed and/or otherwise recorded form. That court held that the main work of appellants was distribution of literature and that the taking of contributions was an incidental part of that work.

The statute here drawn in question is very similar to the ordinance involved in the *Schneider* case, supra, which as

applied this Court held unconstitutional. That ordinance provided:

> "No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge of Police Headquarters."

Said ordinance further required that (as briefed by this Court),

> 'an applicant must undergo a burdensome and inquisitorial examination, including photographing and fingerprinting, and that the permit-issuing officer shall refuse a permit in all cases where the application, or further investigation made at the officer's discretion, shows that the applicant is not of good character or is convassing for a project not free from fraud; and violation is punishable by fine or imprisonment.'

Striking indeed, as to similarity, are both the aim and the principal elements of that ordinance and of the statute here in question. Concerning that type of legislation and rights *exercised* by Jehovah's witnesses as exemplified in conduct of petitioner in the *Schneider* case, ringing declarations of this Court's opinion in that case are noteworthy. On behalf of appellants herein attention is kindly directed to some of those declarations appearing in *red underlineation* in Appendix B hereof.

This Court's holding in the *Schneider* case, supra, is a controlling mandate as to rights of appellants herein and completely secures jurisdiction of this Court as to their contentions herein and vividly shows the invalidity of the Connecticut statute as applied to them.

Conclusion

For the sake of brevity we here make reference to our PETITION FOR APPEAL filed herewith and incorporate, by

such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that substantial federal questions were presented before the Connecticut Supreme Court of Errors.

WHEREFORE the Supreme Court of the United States ought properly to note jurisdiction of this cause for final hearing in accordance with rules of this Court.

Respectfully submitted,

OTTO H. LA MACCHIA,
HAYDEN C. COVINGTON,
Attorneys for Appellants.

APPENDIX A

Copy.

State of Connecticut v. Russell Cantwell et als.

New Haven County, May Term, 1939

Information charging the defendants with the crime of soliciting money for an alleged charitable cause without said cause having been approved by the secretary of the public welfare council in the third count and of breach of the peace in the fifth count, brought to the Court of Common Pleas for New Haven County, where demurrers to said counts were overruled (Pickett, J.) and the issues were tried to the court, Devlin, J.; judgment of guilty and appeal by the defendants. Error in part and new trial ordered.

Olin R. Moyle of the New York bar, and Otto H. La Macchia, with whom, on the brief, was Margaret E. Connors, for the appellants (defendants).

Edwin S. Pickett, prosecuting attorney, with whom was Luke H. Stapleton, for the appellee (the state).

HINMAN, J.:

The defendants were tried and convicted upon the third and fifth counts of an information, the third charging them with violation of Sec. 6294 of the General Statutes as amended by Sec. 860d of the 1937 Supplement, quoted in the footnote,* and the fifth that they "did disturb the pub-

* "No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the county in which such person or organization is located unless such cause shall have been approved by the secretary of the public welfare council. Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both."

lic tranquillity by certain acts or conduct inciting to violence or tending to provoke or excite others * * * to break the peace." Assignments of error pertaining to correction of the finding having been abandoned, this appeal is to be determined upon the facts as found, without the resort to the evidence which is invited in brief and argument.

The defendants, a father (Newton) and his two minor sons, aged sixteen and eighteen years, are members of a religious organization known as Jehovah's witnesses and possessed credentials attesting that they are ordained ministers to preach the gospel. Each was equipped with a bag containing books and pamphlets in several different languages, a portable phonograph, and a set of records each of which when played introduced and was a sales talk for one of the books. Their mode of operation was to go singly from house to house and ask permission to play one of the records. "They would then ask the prospects to buy the book and if not they would accept any contribution they could make. If the prospect was in a position to do this a pamphlet was left on the condition it would be read." On April 26, 1938, they were working in this manner on Cassius Street, in New Haven, which is a thickly-settled neighborhood where about 90 per cent. of the residents are Roman Catholics. A phonograph record giving a sales talk on one of the books, entitled "Enemies," was played in court and was an attack on the Catholic religion. None of the persons solicited were members of Jehovah's witnesses; the defendants had not secured the permit provided by Sec. 6294 of the General Statutes and the trial court concluded that they were guilty of violating it. They claim that none of their activities come within the scope of this statute but that they consisted only of the distribution of printed books, pamphlets and periodicals.

The finding which we have quoted, while somewhat ambiguous, sufficiently shows that in addition to the sale of the books and the distribution of the pamphlets the defendants were also soliciting contributions or donations of money for an alleged religious cause, and thereby came within the purview of the statute. The claim that the evidence was not sufficient to bring them within the statute is

not now open to consideration in the abandonment of attack upon the finding; in fact the quoted paragraph which we regard as decisive was not attacked by the assignments directed against the finding as made.

The further contention that this statute, as applied to the acts of the defendants, is invalid under Secs. 3, 5 and 6 of Article First of the Connecticut Constitution and the due process clause of the Fourteenth Amendment of the Constitution of the United States, appears to be based upon a claim that the statute, as applied to the defendants and their acts, abridges or denies freedom of religious profession and worship and liberty of speech and of the press. As already indicated, and as is plain from its terms, Sec. 6294 does not apply, and is not sought to be applied in this case, to the dissemination, either by sale or free distribution, of printed matter by the defendants. As the defendants recognize in their brief, the purpose of the statute is to protect the public against imposition in the matter of solicitations of funds purportedly for religious, charitable, or philanthropic causes. This is not, and is not claimed to be, objectionable on constitutional grounds. It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in Lovell v. City of Griffin, 303 U. S. 444, 58 Sup. Ct. 666, and Cincinnati v. Mosier, 14 Ohio Opinions 134, the first of which prohibited the distribution of literature of any kind, whether delivered free or sold, without a permit from the city manager, and the second required a license for peddlers selling goods carried by hand. The conviction of violation of Sec. 6294 is supported by the facts found and is not invalid on constitutional grounds.

The fifth count charges a breach of the peace by acts which are within the common-law definition of that offense. 11 C. J. S., p. 818; 2 Brill, Cyclopedia of Criminal Law, p. 1523; 8 Am. Jr., p. 634; 8 R. C. L., Sec. 305, p. 284; 1 Bishop, Criminal Law (9th Ed.) Sec. 539. Section 6194 of the General Statutes does not define the crime known as

breach of the peace, but merely specifies certain ways of committing it. It may be committed in ways other than those so specified. From the time of its original enactment until the revision of 1821 the primary purpose of the statute was to provide for the recovery of damages by a person injured by specified acts directed against him and which are within the scope of those constituting a breach of the peace. General Statutes, Compilation of 1808, p. 545, Revision 1921, p. 162. The specification of such acts logically would be restricted to the types of wrongs which would inflict damage, without design to embrace all acts of breach of the peace. See State v. Farrall, 29 Conn. 72; State v. Christie, 97 Vt. 461, 123 Atl. 849, 34 A. L. R. 577.

The defendants' contention is that the facts are insufficient to establish the offense which is charged. The finding includes the following pertinent facts: Jesse Cantwell stopped John Canley and John Cafferty, both of whom are Catholics, and receiving permission played the phonograph record "Enemies" which attacked that religion and church. on hearing it Canley felt like hitting Cantwell and told him to take his bag and victrola and be on his way. If he had remained he might have received physical violence. Cafferty's mental reaction was to put Jesse off the street and he warned him that he had better get off before something happened to him. Russell Cantwell called at the home of Anna Ri[illegible]by and offered to sell a book known as "Riches". She, already knowing the book and considering it a strong attack against her religion, was angered and complained to the police and "was mad enough to hit him if he did not go away." None of the other witnesses claimed to have any knowledge of the contents of the books other than what they heard from the phonograph record. There was no evidence that the defendants became offensive or entered into any arguments upon refusal to purchase the books.

The charge here is not, as the defendants seem to infer, a "solicitation" to commit crime, as in State v. Avery, 7 Conn. 266 (adultery), and State v. Schleifer, 99 Conn. 432, 121 Atl. 805 (murder, assault, etc.), and in State v. Quinlan, 86 N. J. L. 120, 91 Atl. 111, but provoking or exciting others to break the peace. It is not necessary, as claimed, to show

that other persons were actually provoked to the point of violence or disturbance of the peace. Bishop, Op. Cit., Sec. 539; State v. Farrall, supra; State v. Warner, 34 Conn. 276, 279; Davis v. Burgess, 34 Mich. 514, 517, 20 N. W. 540; Delk v. Commonwealth, 166 Ky. 39, 45, 178 S. W. 1129, L. R. A. 1916B, 1117. Nor is a specific intent to provoke a breach of the peace essential; it is sufficient if the acts are such as tend to produce it. State v. Shelby, 95 Minn. 65, 103 N. W. 725. The doing of acts or the use of language which, under circumstances of which the person is or should be aware, are calculated or likely to provoke another person or other persons to acts of immediate violence may constitute a breach of the peace. St. Louis v. Slupsky, 254 Mo. 309, 318, 162 S. W. 155, 157, 49 L. R. A. (N. S.) 919; Holmes v. State, 135 Ark. 187, 189, 204 S. W. 846; Faulkner v. State, 166 Ga. 645, 665, 114 S. E. 193. The rule is as applicable where, instead of being directly spoken, the objectionable language is communicated, as here, by means of a victrola operated by the person accused, or by banner or placard as in West v. Commonwealth, 208 Ky. 735, 271 S. W. 1079. The effect or tendency of words or conduct depends largely upon the circumstances, and is a question of fact. State v. Moser, 33 Ark. 140. It is apparent from the facts found that the playing for audition by loyal Catholics of a record violently attacking their religion and church could well be found to constitute the offense charged, and they warrant finding the defendant Jesse Cantwell guilty. As was observed in Delk v. Commonwealth, supra, 47, while the right to propagate religious views is not to be denied "one will not be permitted to commit a breach of the peace under the guise of preaching the gospel".

We are unable, however, to discover in the facts found sufficient justification for the conviction of the other two defendants upon this count. Aside from the one incident between Russell Cantwell and Anna Rigby, the most that the finding discloses, as to them in this connection, is a house to house canvassing which is inadequate to constitute the offense charged, as well as apparently subject to the constitutional considerations advanced in Lovell v. City of Griffin, and Cincinnati v. Mosier, supra. As to the Rigby incident,

the resentment entertained by her appears to have been engendered by prior acquaintance with the book of which, so far as the record shows, Cantwell was unaware, rather than anything offensive in the words or manner of his offer to sell it to her. The foregoing considerations also support, as to these two defendants, the assignments of error in the admission and retention of excerpts from the books and pamphlets, but this evidence is extraneous to the facts supporting the charge as against the defendant Jesse Cantwell and could not have been prejudicial to him.

There is no error as to the conviction of all of the defendants on the third count, or that of the defendant Jesse Cantwell on the fifth count; there is error as to the defendants Newton and Russell Cantwell on the fifth count and a new trial is ordered thereon, as to them.

In this opinion the other judges concurred except that Maltbie, C. J., and Brown, J., dissented from so much of it as holds that the finding was sufficient to support the conviction of the accused upon the third count under the statute penalizing the solicitation of money or other valuable thing.

APPENDIX B

SUPREME COURT OF THE UNITED STATES

Nos. 11, 13, 18 and 29—October Term, 1939

CLARA SCHNEIDER, *Petitioner,*

11 *vs.*

THE STATE (Town of Irvington)

On Writ of Certiorari to the Court of Errors and Appeals of the State of New Jersey.

KIM YOUNG, *Appellant,*

13 *vs.*

THE PEOPLE OF THE STATE OF CALIFORNIA

On Appeal from the Appellate Department of the Superior Court of Los Angeles County, California.

HAROLD F. SNYDER, *Petitioner,*

18 *vs.*

CITY OF MILWAUKEE

On Writ of Certiorari to the Supreme Court of the State of Wisconsin.

ELMIRA NICHOLS and PAULINE THOMPSON, *Appellants,*

29 *vs.*

COMMONWEALTH OF MASSACHUSETTS

On Appeal from the Superior Court, County of Worcester, Commonwealth of Massachusetts.

The leading case here is about one of **Jehovah's witnesses.** She went from door to door leaving with interested persons literature explaining the purposes of Almighty God as written in the Bible. From some of such persons she accepted contributions given to aid in printing and distributing more like literature. She was accused and convicted as a violator of a canvassing ordinance. She purposely had not applied to police for a permit, for she considered herself as sent by the Most High God, JEHOVAH, to do His work under Christ Jesus, and that therefore to apply to any creature for a permit would be an act of disobedience to her Creator. Her wrongful conviction was reversed by the nation's highest court as an unlawful encroachment upon rights safeguarded for every inhabitant of the United States by its Constitution, as defined in an earlier case of another of Jehovah's witnesses (Lovell v. City of Griffin, 303 U. S. 444) and in the following momentous opinion.

[November 22, 1939]

Mr. Justice ROBERTS delivered the opinion of the Court.

Four cases are here, each of which presents the question of whether regulations embodied in a municipal ordinance abridge the freedom of speech and of the press secured

against state invasion by the Fourteenth Amendment of the Constitution.[1]

No. 13

The Municipal Code of the City of Los Angeles, 1936, provides:

"Sec. 28.00. 'Hand-Bill' shall mean any hand-bill, dodger, commercial advertising circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice, or other written, printed or painted matter calculated to attract attention of the public."

"Sec. 28.01. No person shall distribute any hand-bill to or among pedestrians along or upon any street, sidewalk or park, or to passengers on any street car, or throw, place or attach any hand-bill in, to or upon any automobile or other vehicle."

The appellant was charged in the Municipal Court with a violation of Sec. 28.01. Upon his trial it was proved that he distributed handbills to pedestrians on a public sidewalk and had more than three hundred in his possession for that purpose. Judgment of conviction was entered and sentence imposed: The Superior Court of Los Angeles County affirmed the judgment.[2] That court being the highest court in the State authorized to pass upon such a case, an appeal to this court was allowed.

The handbill which the appellant was distributing bore a notice of a meeting to be held under the auspices of "Friends Lincoln Brigade" at which speakers would discuss the war in Spain.

The court below sustained the validity of the ordinance on the ground that experience shows littering of the streets results from the indiscriminate distribution of handbills.[3] It

[1] On account of the importance of the question we granted certiorari in two of the cases, and noted jurisdiction in the others.

[2] 3 Calif. App. Supp. 62; 85 Pac. (2d) 231.

[3] On the hand-bill were the words "Admission 25¢ and 50¢". The Superior Court adverted to these and said: "Whatever traffic in ideas the Friends Lincoln Brigade may have planned for the meeting, the cards themselves seem to fall within the classification of commercial advertising rather than the expression of one's views. But if this be so, our conclusion is not thereby changed."

held that the right of free expression is not absolute but subject to reasonable regulation and that the ordinance does not transgress the bounds of reasonableness. *Lovell* v. *City of Griffin*, 303 U. S. 444, was distinguished on the ground that the ordinance there in question prohibited distribution anywhere within the city while the one involved forbids distribution in a very limited number of places.

No. 18

An ordinance of the City of Milwaukee, Wisconsin, provides:

"It is hereby made unlawful for any person * * * to circulate or distribute any circular, hand-bills, cards, posters, dodgers, or other printed or advertising matter * * * in or upon any sidewalk, street, alley, wharf, boat landing, dock or other public place, park or ground within the City of Milwaukee." * * *

The petitioner, who was acting as a picket, stood in the street in front of a meat market and distributed to passing pedestrians handbills which pertained to a labor dispute with the meat market, set forth the position of organized labor with respect to the market, and asked citizens to refrain from patronizing it. Some of the bills were thrown in the street by the persons to whom they were given and it resulted that many of the papers lay in the gutter and in the street. The police officers who arrested the petitioner and charged him with a violation of the ordinance did not arrest any of those who received the bills and threw them away. The testimony was that the action of the officers accorded with a policy of the police department in enforcement of the ordinance to the effect that, when such distribution resulted in littering of the streets, the one who was the cause of the littering, that is, he who passed out the bills, was arrested rather than those who received them and afterwards threw them away. The Milwaukee County court found the petitioner guilty and fined him. On appeal the judgment was affirmed by the Supreme Court.[4]

[4] — Wis. —; 283 N. W. 301.

The court held that the purpose of the ordinance was to prevent an unsightly, untidy, and offensive condition of the sidewalks. It distinguished *Lovell* v. *City of Griffin, supra*, on the ground that the ordinance there considered manifestly was not aimed at prevention of littering of the streets. The court approved the administrative construction of the ordinance by the police officials and felt that this construction sustained its validity. The court said: "Unless and until delivery of the hand-bills was shown to result in a littering of the streets their distribution was not interfered with."

No. 29

An ordinance of the City of Worcester, Massachusetts, provides:

"No person shall distribute in, or place upon any street or way, any placard, handbill, flyer, poster, advertisement or paper of any description." * * *

The appellants distributed in a street leaflets announcing a protest meeting in connection with the administration of State unemployment insurance. They did not throw any of the leaflets on the sidewalk or scatter them. Some of those to whom the leaflets were handed threw them on the sidewalk and the street, with the result that some thirty were lying about.

The appellants were arrested and charged with a violation of the ordinance. The Superior Court of Worcester County rendered a judgment of conviction and imposed sentence. The Supreme Judicial Court overruled exceptions.[5] That court held the ordinance a valid regulation of the use of the streets and sought thus to distinguish it from the one involved in *Lovell* v. *City of Griffin, supra*, which the court said was not such a regulation. Referring to the ordinance the court said: "It interferes in no way with the publication of anything in the city of Worcester, except only that it excludes the public streets and ways from the places available for free distribution. It leaves open for such distribution all other places in the city, public and private."

[5] Mass. Adv. 1938, 1969; 18 N. E. (2d) 166.

No. 11

An ordinance of the Town of Irvington, New Jersey, provides: "No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge of Police Headquarters." It further enacts that a permit to canvass shall specify the number of hours or days it will be in effect; that the canvasser must make an application giving his name, address, age, height, weight, place of birth, whether or not previously arrested or convicted of crime, by whom employed, address of employer, clothing worn, and description of project for which he is canvassing; that each applicant shall be fingerprinted and photographed; that the Chief of Police shall refuse a permit in all cases where the application, or further investigation made at the officer's discretion, shows that the canvasser is not of good character or is canvassing for a project not free from fraud; that canvassing may only be done between 9 A. M. and 5 P. M.; that the canvasser must furnish a photograph of himself which is to be attached to the permit; that the permittee must exhibit the permit to any police officer or other person upon request, must be courteous to all persons in canvassing, must not importune or annoy the town's inhabitants or conduct himself in an unlawful manner and must, at the expiration of the permit, surrender it at police headquarters. Persons delivering goods, merchandise, or other articles in the regular course of business to the premises of persons ordering, or entitled to receive the same, are exempted from the operation of the ordinance. Violation is punishable by fine or imprisonment.

The petitioner was arrested and charged with canvassing without a permit. The proofs show that she is a member of the Watch Tower Bible and Tract Society and, as such, certified by the society to be one of "Jehovah's witnesses". In this capacity she called from house to house in the town at all hours of the day and night and showed to the occupants a so called testimony and identification card signed by the society. The card stated that she would leave some

booklets discussing problems affecting the person interviewed; and that, by contributing a small sum, that person would make possible the printing of more booklets which could be placed in the hands of others. The card certified that the petitioner was an ordained minister sent forth by the society, which is organized to preach the gospel of God's kingdom, and cited passages from the Bible with respect to the obligation so to preach. The petitioner left, or offered to leave, the books or booklets with the occupants of the houses visited. She did not apply for or obtain a permit pursuant to the ordinance because she conscientiously believed that so to do would be an act of disobedience to the command of Almighty God.

The petitioner was convicted in the Recorder's Court. The Court of Common Peas affirmed the judgment. On a further appeal the Supreme Court affirmed.[6] The Court of Errors and Appeals affirmed the judgment of the Supreme Court.[7]

The Supreme Court held that the petitioner's conduct amounted to the solicitation and acceptance of money contributions without a permit, and held the ordinance prohibiting such action a valid regulation, aimed at protecting occupants and others from disturbance and annoyance and preventing unknown strangers from visiting houses by day and night. It overruled the petitioner's contention that the measure denies or unreasonably restricts freedom of speech or freedom of the press. The Court of Errors and Appeals thought *Lovell* v. *City of Griffin, supra*, not controlling, since the ordinance in that case prohibited all distribution of printed matter and was not limited to ways which might be regarded as consistent with the maintenance of public order or as involving disorderly conduct, molestation of inhabiants, or misuse or littering of the streets, whereas the ordinance here involved is aimed at canvassing or soliciting, subjects not embraced in that condemned in the *Lovell* case. The Court said: "A municipality may protect its citizens against fraudulent solicitation and, when it enacts an ordinance to do so, all persons are required to abide thereby.

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[6] 120 N. J. Law, 460.
[7] 121 N. J. Law, 542.

The ordinance in question was evidently designed for that purpose." * * *

The freedom of speech and of the press secured by the First Amendment against abridgment by the United States is similarly secured to all persons by the Fourteenth against abridgment by a state.[8]

Although a municipality may enact regulation in the interest of the public safety, health, welfare or convenience, these may not abridge the individual liberties secured by the Constitution to those who wish to speak, write, print or circulate information or opinion.

Municipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no neces-

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[8] Gitlow *v.* New York, 268 U. S. 652; Whitney *v.* California, 274 U. S. 357; Stromberg *v.* California, 283 U. S. 359; Grosjean *v.* American Press Co., 297 U. S. 233; DeJonge *v.* Oregon, 299 U. S. 353; Herndon *v.* Lowry, 301 U. S. 242; Lovell *v.* Griffin, 303 U. S. 444. There is no averment or proof in any of the cases that the appellants or petitioners are citizens of the United States, and in the *Young* case, No. 13, the applicable provisions of the municipal code were challenged on the sole ground that they infringed the due process clause of the Fourteenth Amendment. Cf. New York ex rel. Cohn *v.* Graves, 300 U. S. 308, 317; Northwestern Bell Telephone Co. *v.* Nebraska State Ry. Comm., 297 U. S. 471 at 473.

sary relationship to the freedom to speak, write, print or distribute information or opinion.

This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties.[9] The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that *exercise of the rights* lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.

In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at *other* personal activities, but be insufficient to justify such as diminishes the *exercise of rights* so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the *free enjoyment of the rights.*

In *Lovell* v. *City of Griffin, supra,* this court held void an ordinance which forbade the distribution by hand or otherwise of literature of any kind without written permission from the city manager. The opinion pointed out that the ordinance was not limited to obscene and immoral literature or that which advocated unlawful conduct, placed no limit on the privilege of distribution in the interest of public order, was not aimed to prevent molestation of inhabitants or misuse or littering of streets, and was without limitation as to time or place of distribution. The court said that, whatever the motive, the ordinance was bad because it imposed penalties for the distribution of pamphlets, which had become historical weapons in the defense of liberty, by subjecting such distribution to license and censorship; and that the ordinance was void on its face, because it abridged the freedom of the press. Similarly in *C. I. O.* v.

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[9] Grosjean v. American Press Co., *supra,* p. 244; DeJonge v. Oregon, *supra,* p. 364; Lovell v. City of Griffin, *supra,* p. 450.

Hague, — U. S. —, an ordinance was held void on its face because it provided for previous administrative censorship of the exercise of the right of speech and assembly in appropriate public places.

The Los Angeles, the Milwaukee, and the Worcester ordinances under review do not purport to license distribution but all of them absolutely prohibit it in the streets and, one of them, in other public places as well.

The motive of the legislation under attack in Numbers 13, 18 and 29 is held by the courts below to be the prevention of littering of the streets and, although the alleged offenders were not charged with themselves scattering paper in the streets, their convictions were sustained upon the theory that distribution by them encouraged or resulted in such littering. We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets.

It is argued that the circumstance that in the actual enforcement of the Milwaukee ordinance the distributor is arrested only if those who receive the literature throw it in the streets, renders it valid. But, even as thus construed, the ordinance cannot be enforced without unconstitutionally abridging the liberty of free speech. As we have pointed out, the public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution.

It is suggested that the Los Angeles and Worcester ordinances are valid because their operation is limited to streets and alleys and leaves persons free to distribute printed matter in other public places. But, as we have said, the

streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.

While it affects others, the Irvington ordinance drawn in question in No. 11, as construed below, *affects all those, who, like the petitioner, desire to impart information and opinion to citizens at their homes.* If it covers the petitioner's activities it equally applies to one who wishes to present his views on political, social or economic questions. The ordinance is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers. It is not a general ordinance to prohibit trespassing. *It bans unlicensed communication of any views or the advocacy of any cause from door to door,* and permits canvassing only subject to the power of a police officer to determine, as a censor, what literature may be distributed from house to house and who may distribute it. The *applicant must submit to that officer's judgment* evidence as to his good character and as to the absence of fraud in the "project" he proposes to promote or the literature he intends to distribute, and *must undergo a burdensome and inquisitorial examination,* including photographing and fingerprinting. In the end, *his liberty to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion.*

As said in *Lovell* v. *City of Griffin, supra,* pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people. On this method of communication the ordinance imposes censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees.

Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press.

We are not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires. Nor do we hold that the town may not fix reasonable hours when canvassing may be done by persons having such objects as the petitioner. Doubtless there are other features of such activities which may be regulated in the public interest without prior licensing or other invasion of constitutional liberty. We do hold, however, that the ordinance in question, *as applied to the petitioner's conduct*, is void, and she cannot be punished for *acting without a permit*.

The judgment in each case is reversed and the causes are remanded for further proceedings not inconsistent with this opinion.

So ordered.

Mr. Justice McReynolds is of opinion that the judgment in each case should be affirmed.

A true copy. Test:

_____,

Clerk, Supreme Court, U. S.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 632

■

JESSE CANTWELL, NEWTON CANTWELL
and RUSSELL CANTWELL,
Appellants;

JESSE CANTWELL,
Petitioner,

v.

THE STATE OF CONNECTICUT.
Respondent.

■

APPEAL FROM AND CERTIORARI TO THE CONNECTICUT
SUPREME COURT OF ERRORS

APPELLANTS' AND PETITIONER'S BRIEF.

JOSEPH F. RUTHERFORD
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Attorneys for Petitioners

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UNITED STATES SUPREME COURT

October Term, 1939

No. 632

JESSE CANTWELL, NEWTON CANTWELL
and RUSSELL CANTWELL,
Appellants;

JESSE CANTWELL,
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v.

THE STATE OF CONNECTICUT
Respondent.

■

APPEAL FROM AND CERTIORARI TO THE CONNECTICUT SUPREME COURT OF ERRORS

APPELLANTS' AND PETITIONER'S BRIEF

Opinions Below

The opinion of the Connecticut Supreme Court of Errors is not yet officially reported, but is unofficially reported in Atlantic Reports, Vol. 8 (second series), pages 533-537.

The opinion of the Court of Common Pleas is not reported.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a), (b) and (c) of the Judicial Code [28 USCA 344 (a), (b) and (c)].

Timeliness

The judgment of the Connecticut Supreme Court of Errors was entered on June 26, 1939 (Record p. 102). The opinion of that court was delivered on the same date and appears in the Record, p. 97 et seq. Notice in writing of petitioners' intention to present motion for reargument was duly filed. On September 12, 1939, petitioners duly and timely filed their motion for reargument (R. p. 103). The motion for reargument was overruled and denied October 13, 1939 (R. p. 105). Thereby the judgment of the Connecticut Supreme Court of Errors as rendered and entered on June 26, 1939, became final as against petitioners on October 13, 1939. A petition for appeal to the Supreme Court of the United States was duly and timely filed with the Connecticut Supreme Court of Errors, which was duly and timely docketed with this Court within ninety days from the date that the judgment of the Connecticut Supreme Court of Errors became final. On February 26, 1940, this Court noted probable jurisdiction as to appeal of all defendants from the conviction under the third count, and the papers on which appeal was allowed were treated as a petition for writ of certiorari as to the appeal of Jesse Cantwell from his conviction under the fifth count, and certiorari was granted.*

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* Hereinafter the term "petitioners" or "petitioner" is used uniformly to designate all or any of the appellants as to the conviction of each of them under the "third count" and the petitioner Jesse Cantwell as to his conviction under the "fifth count".

The Statutes

One of the statutes, the constitutionality and validity of which as construed and applied to petitioners is here drawn in question, is Section 6294 of Connecticut General Statutes, Revision of 1930 (pages 1935, 1936), as amended by Section 860d of the Connecticut Public Acts 1937 (page 490), and which statute reads as follows:

> "No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the county in which such person or organization is located unless such cause shall have been approved by the secretary of the public welfare council. Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both."

The other of the statutes, the constitutionality and validity of which as construed and applied to petitioners is here drawn in question, is Section 6194 of Connecticut General Statutes, and which statute reads as follows:

> "Any person who shall disturb or break the peace by tumultuous and offensive carriage, noise or behavior, or by threatening, traducing, quarreling with, challenge, assaulting or striking another, or shall disturb or break the peace, or provoke contention by following or mocking any person with abusive or indecent language, gesture or noise, or shall by any writing, with intent to intimidate any person, threaten

to commit any crime against him or his property, or shall write or print and publicly exhibit or distribute, or shall publicly exhibit, post up or advertise any offensive, indecent or abusive matter concerning any person, shall be fined not more than five hundred dollars, or imprisoned in jail not more than one year or both."

The Connecticut Supreme Court of Errors and the courts below held that the statutes were not unconstitutional and that they did not abridge freedom of speech and press and freedom to worship ALMIGHTY GOD, in violation of the United States Constitution, Fourteenth Amendment, Section 1. Accordingly, that court sustained the statutes' applicability to petitioners' acts and decided in favor of validity of the statutes and held them to be constitutional as applied to petitioners.

Statement

Petitioners, a father (Newton Cantwell) and his two minor sons (Jesse and Russell) aged sixteen and eighteen, respectively, are Jehovah's witnesses. (R. p. 55) Each bore credentials attesting that the Watch Tower Bible & Tract Society was represented by them and that each of them is an ordained minister of Almighty God to preach the gospel of His Kingdom under Christ Jesus. (R. p. 19, Exhibit B) Each was equipped with a bag containing books and pamphlets in several different languages, a portable phonograph, and a set of disk records in several different languages, which records when played introduced and described the literature containing explanations of the purposes and prophecies of Almighty God written in the Bible. (R. p. 19, Exhibit C)

On April 26, 1938, petitioners were preaching the gospel of God's Kingdom in the city of New Haven by going singly from house to house, tendering to each householder opportunity to hear the playing of one of the phonograph records.

(R. p. 55) The record played to the householder was also played in open court, and it says:

"The publishers now exhibit to the people the book entitled 'Enemies'. The purpose is to enable all persons who love peace and righteousness to learn how they may find protection and safety.

"Fear and dread now afflict almost all persons. There is a real reason. To know the reason and to learn how one may gain peace and joy are of very great importance.

"The perfect word of God is the authority upon which the book 'Enemies' is based. Therein is found the proof that the greatest enemy of man is invisible to human eyes, and which is Satan the deceiver. His purpose is to entrap men and lead them into destruction. A host of wicked angels operate with him, and he also uses selfish and ambitious men to accomplish his wicked purpose. He has deceived and overreached the rulers, made them unjust and cruel, and for centuries the result to the people has been much suffering and distress.

"The most seductive and subtle instrument employed to deceive man is religion, because religion has the appearance of doing good, whereas it brings upon the people great evil. There are many different religions, all of which are deceptive, are the instruments of the enemy Satan, and all work to the injury of men.

"This book submits the conclusive proof that for more than fifteen hundred years a great religious system, operating out of Rome, has by means of fraud and deception brought untold sorrow and suffering upon the people. It operates the greatest racket ever employed amongst men and robs the people of their money and destroys their peace of mind and freedom of action. That religious system is vigorously pushing its political schemes amongst all the nations of earth, with the avowed purpose of seizing control of the nations and ruling the people by cruel dictators.

Some of the nations have fallen under that wicked power, and all nations are now greatly endangered. Because of the increasing power of the enemy the liberties of the people are rapidly passing away and all nations are rushing into infidelity and into ultimate destruction.

"All thoughtful persons realize that the people now face the greatest crisis yet known. Enemies of man are everywhere, and no uninformed man feels safe and secure. Where and how can the people find protection from such enemies? Some power far greater than that of Satan and his allies must intervene in behalf of the people if they find and receive protection from their enemies. There is no human power that can protect man, and this all thoughtful persons must admit. The matter is of too great importance to pass it by without consideration. The Almighty God in his goodness has made it possible for every person to now get the greatly needed information.

"The book 'Enemies' submits for your instruction the correct answer to the questions and the complete proof in support thereof, and which proof is indisputable and will satisfy every reasonable mind. It discloses who are the real friends of honest men and what men must do to find security and life. For the protection of yourself and your children a knowledge and understanding of the contents of that book is absolutely necessary. It is now being carried to the people by those who love God and who have the interest of honest persons fully at heart. The publishers are not selling the book, but they do receive a small contribution for each book, which will be used for printing more books to aid the people. Persons who are too poor to contribute will receive the book free upon condition that they study it carefully. To learn the contents of this book will greatly benefit you and enable you to do good to others and to honor your Creator.

"Because the book 'Enemies' makes known the truth, you will find that the clergymen of all religious organizations will oppose it and try to prevent you from

learning its contents. Such opposers are your enemies. Ignore them and keep in mind the word of Almighty God wherein it is written, 'Study to show thyself approved unto God.' A knowledge of His word is your shield." (R. pp. 40-42)

At the conclusion of the playing of the above record the petitioners would invite the householder to receive one or more of the books or pamphlets and to contribute a small sum to aid in printing and distributing more like literature; and whenever a householder was not in position to contribute, a book or a pamphlet was left, free of charge, on the condition that it would be read and studied by the person so receiving it. (R. p. 55)

On April 26, 1938, petitioners were arrested for preaching the gospel of God's Kingdom in the above-described manner on Cassius Street in New Haven, that being a thickly populated area where, according to the court below, about ninety percent of the residents are Roman Catholics. (R. p. 98).

The identification card carried by each petitioner and introduced in evidence before the trial court, provided over the signature of the Watch Tower Bible & Tract Society by its president, J. F. Rutherford, a certificate that the named bearer 'is an ordained minister of Jehovah God and as such is one of Jehovah's witnesses and a representative of the society, which is chartered by law to preach the gospel of God's kingdom, and that the said minister as one of Jehovah's witnesses is commanded by Almighty God to obey His law, which commandments are written in the Bible at Isaiah 61:1, 2; Isaiah 43:9-12; Matthew 10:7, 12; Matthew 24:14; Acts 20:20; 1 Peter 2:21; 1 Corinthians 9:16; Acts 3:23; Acts 4:19; Acts 5:29'. (R. p. 19, Exhibit B)

The above facts were found by the trial court. (R. p. 18)

By informations, each containing five counts, petitioners severally were charged with violating, among other

things, Section 6294 of Connecticut General Statutes as amended by Section 860d of the 1937 Supplement quoted above (page 3) and in the footnote of the Opinion of the Connecticut Supreme Court of Errors. (R. p. 97) This offense was charged in the third count. Under the fifth count the State contended that the act of presenting this literature containing subject matter which shocked the religious susceptibilities of the complaining witnesses constituted a breach of the peace or was conduct inciting a breach of the peace. (R. pp. 2-4, 97)

Demurrers to all five counts were filed by petitioners and were overruled as to the third and fifth counts and sustained as to all other counts. (R. pp. 11-14) The case was tried to the court without a jury and after hearing evidence, on September 23, 1938, all of the petitioners, who were jointly tried by agreement, were convicted of violating the third and fifth counts and fined five ($5.00) dollars on each of said counts. Costs were taxed against Newton Cantwell; $55.80; and $30.07 costs against each of the other two petitioners. All were ordered to stand committed until judgment should be complied with. (R. p. 14)

On October 20, 1938, petitioners by proper instrument duly and timely appealed from the convictions to the Supreme Court of Errors. (R. p. 16) It was stipulated that the cases on appeal would be consolidated and reviewed on the one record. (R. p. 16)

The books *Riches* and *Enemies* were introduced in evidence (Exhibit A). Portions of the books *Enemies, Preservation,* and *Riches,* and the booklet *Cure,* were read in evidence by the prosecuting attorney. (R. pp. 42-52) The contents of these books related exclusively to explanation of how prophecies of Holy Writ recorded centuries ago are now being fulfilled; of how, according to the Bible, the time is near at hand when JEHOVAH, the Almighty God, will completely destroy Satan and his entire organization, consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty"

at Armageddon; which destruction shall be immediately followed by continuing growth and expansion of God's Kingdom throughout the entire earth, to bring everlasting peace, joy, life, prosperity and happiness to all survivors and eventually also to many who have died in centuries past and who shall be resurrected to live upon earth. The contents, in part, are admittedly an attack upon religion as practiced today and at all times since man has been upon earth, but at the same time such books' contents clearly set forth the true distinction between all religion and the true worship or service of Almighty God, thereby exposing religion as a snare and a racket of the very worst kind, and that religion is in no way related to or a part of the true worship of Almighty God. (R. p. 19)

Federal Questions Presented

Substantial *federal questions* attacking the validity of the statutes were raised in the trial court. They were first raised by demurrer to the third and fifth counts of the informations, on the grounds that Sections 6194, 6294, 6066 and 6244 of Connecticut Statutes are invalid in that each of said statutes unreasonably restricts and denies freedom of speech, freedom of press and freedom to worship Almighty God, as to petitioners. (See points 3, 4, 5 and 6 of demurrer, R. p. 11.) These points as to said statutes were overruled by the court. (See Memorandum on Demurrer, R. p. 12) As grounds for moving for judgment in their behalf petitioners, at conclusion of the evidence, made the following claims of law:

That Section 6294 of Connecticut General Statutes was contrary to Article 1, Sections 3, 5 and 6 of the Connecticut Constitution and to the "due process" clause of the Fourteenth Amendment to the United States Constitution, in that as applied it unduly restricts and denies freedom of

speech, freedom of press and freedom to worship Almighty God. (R. pp. 25-26)

These points of law were overruled by the trial court. (See Record, p. 22, Section II, paragraphs 1, 2 and 3.)

These *federal questions* were carried forward and urged in the assignments of error which were presented to the Supreme Court of Errors in the time and manner required by statute. (See Record, p. 27, Assignments of Error, paragraph 8.)

The Supreme Court of Errors passed upon each of said *federal questions* or assignments attacking the validity of the statutes as applied to appellants, and held the statutes valid and constitutional as so applied and found that they did not violate the Fourteenth Amendment to the United States Constitution. (See Opinion, R. pp. 97-102.) That court said:

> "The further contention that this statute, as applied to the acts of the defendants, is invalid under Secs. 3, 5 and 6 of Article First of the Connecticut Constitution and the due process clause of the Fourteenth Amendment of the Constitution of the United States, appears to be based upon a claim that the statute, as applied to the defendants and their acts, abridges or denies freedom of religious profession and worship and liberty of speech and of the press. . . . It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in Lovell v. City of Griffin, 303 U. S. 444, . . . and Cincinnati v. Mosier, 14 Ohio Opinions 134 . . . The conviction of violation of Sec. 6294 is supported by the facts found and is not invalid on constitutional grounds."

The Supreme Court of Errors set aside the conviction of Russell Cantwell and Newton Cantwell under the fifth

count charging 'inciting a breach of the peace' but sustained the conviction of Jesse Cantwell under such count five which assessed a fine and costs.

The Supreme Court of Errors sustained the conviction of each of the three defendants under the third count charging a violation of Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement, and affirmed the judgment of the trial court assessing a fine and costs as to each defendant. (R. p. 102)

In their motion for reargument the petitioners each complained of the judgment of the Supreme Court of Errors for and on account of each of the grounds set forth in the assignments of error contained in the petition for appeal to the United States Supreme Court herein. (R. pp. 103, 110)

Specification of Errors to Be Urged

Petitioners assign the following errors in the record and proceedings in said cause:

1. The court below committed reversible error in failing to hold that the Connecticut statute, Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement as construed and applied to the petitioners is void by reason of the fact that on its face and as thus construed and applied it is in conflict with the "due process" clause of the Fourteenth Amendment to the United States Constitution in the following particulars, to wit:

a) It unreasonably and unlawfully abridges and denies petitioners' freedom to worship Almighty God, Jehovah, according to the God-given commands recorded in Holy Writ and according to the dictates of the conscience of each petitioner.

b) It unreasonably and unlawfully abridges and denies petitioners' freedom of speech and of press.

2. The court below committed reversible error in failing to hold that Section 6194 of Connecticut General Statutes as construed and applied to the petitioner Jesse Cantwell is void by reason of the fact that on its face and as thus construed and applied it is repugnant to the United States Constitution, Fourteenth Amendment, Section 1, in that

a) it unreasonably and unlawfully deprives petitioner of his liberty to worship ALMIGHTY GOD according to God-given commands recorded in Holy Writ and according to the dictates of petitioner's conscience; and

b) it unreasonably and unlawfully deprives petitioner of his liberty to speak freely and his liberty of press.

3. The court below committed reversible error in failing to hold that the undisputed evidence showed that petitioner Jesse Cantwell was not guilty of violating the "breach of the peace" statute by playing the phonograph record "Enemies" in the hearing of John Ganley at Ganley's invitation.

Points for Argument

POINT ONE

Section 6294 of Connecticut General Statutes as amended by Section 860d of the 1937 Supplement on its face and as construed and applied unreasonably and unlawfully deprives petitioners of their right of freedom to worship ALMIGHTY GOD and is therefore invalid under the "due process" clause of the Fourteenth Amendment to the United States Constitution.

A

The 'imprescriptible right' of freedom to worship ALMIGHTY GOD, Jehovah, in accordance with God-given commands recorded in Holy Writ and with the dictates of one's own conscience is definitely and clearly included within the liberties and rights secured under the "due process" clause of the Fourteenth Amendment against state invasion.

B

The 'imprescriptible right' to freely worship and serve Almighty God, JEHOVAH, by going from door to door as commanded by JEHOVAH, whose law is supreme, and as did Jesus Christ and His apostles, is an essential privilege and one of the "imprescriptible rights" of every person who resides within the United States of America.

POINT TWO

Section 6294 of Connecticut General Statutes as amended by Section 860d of the 1937 Supplement as construed and applied to petitioners unreasonably and unlawfully deprives petitioners of their rights of freedom of speech and of press protected and secured against state invasion under the "due process" clause of the Fourteenth Amendment to the United States Constitution.

POINT THREE

Section 6194 of Connecticut General Statutes as construed and applied to petitioner Jesse Cantwell unreasonably and unlawfully deprives him of his liberty to worship ALMIGHTY GOD according to the God-given mandates recorded in Holy Writ and according to the dictates of petitioner's conscience, and of his liberty of speech and of press, all in violation of the United States Constitution, Fourteenth Amendment, Section 1.

POINT FOUR

The undisputed evidence shows beyond all doubt that the petitioner Jesse Cantwell was not guilty of the offense of inciting a breach of the peace, and to permit his conviction thereof to stand constitutes amputation of his "imprescriptible rights" of freedom to worship ALMIGHTY GOD, and freedom of speech and of press, under the guise of "breach-of-peace statute" violation.

ARGUMENT

POINT ONE

Section 6294 of Connecticut General Statutes as amended by Section 860d of the 1937 Supplement on its face and as construed and applied unreasonably and unlawfully deprives petitioners of their right of freedom to worship ALMIGHTY GOD and is therefore invalid under the "due process" clause of the Fourteenth Amendment to the United States Constitution.

A

The 'imprescriptible right' of freedom to worship ALMIGHTY GOD, Jehovah, in accordance with God-given commands recorded in Holy Writ and with the dictates of one's own conscience is definitely and clearly included within the liberties and rights secured under the "due process" clause of the Fourteenth Amendment against state invasion.

It is a fundamental proposition of law that the right of "freedom of worship", like that of "freedom of speech" and of "press", is an inherent right of every person residing in the United States. This Court has held that in this country the full and free right to entertain any belief, to practice any righteous principle, and to teach any sound doctrine is conceded to all persons.

Watson v. Jones,
80 U. S. 728

In *Hamilton* v. *Regents*, 293 U. S. 245, 265, Mr. Justice Cardozo said:

> "I assume for present purposes that the religious liberty protected by the First Amendment against invasion by the nation is protected by the Fourteenth Amendment against invasion by the states."

This same fundamental principle is expressed in *Palko* v. *Connecticut*, 302 U. S. 319, 325; *Snyder* v. *Massachusetts*, 291 U.S. 105; *Stromberg* v. *California*, 283 U.S. 359; *Hague* v. *C. I. O. et al.* (Mr. Justice Stone's opinion), 307 U.S. 496; *Gitlow* v. *New York*, 268 U. S. 652; *Davis* v. *Beason*, 133 U. S. 333, 342, 343; *Meyer* v. *Nebraska*, 262 U. S. 390; *De Jonge* v. *Oregon*, 299 U. S. 353; *Herndon* v. *Lowry*, 301 U. S. 242; *Gobitis* v. *Minersville School Dist. et al.*, 21 F. Supp. 581, 24 F. Supp. 271, affirmed November 10, 1939, C. C. A. (3), 108 F. (2) 683; and now pending before this Court on writ of certiorari, No. 690, October Term, 1939; *Lovell* v. *City of Griffin*, 303 U. S. 444; *Schneider* v. *Town of Irvington*, 308 U. S. 147.

Attention is drawn to language of Mr. Justice Butler in *Hamilton* v. *Regents*, supra, as follows:

> "There need be no attempt to enumerate or comprehensively to define what is included in the 'liberty' protected by the due process clause. Undoubtedly it does include the right to entertain the beliefs, to adhere to the principles, and to teach the doctrines on which these students base their objections to the order prescribing military training."

B

The 'imprescriptible right' to freely worship and serve Almighty God, JEHOVAH, by going from door to door as commanded by JEHOVAH, whose law is supreme, and as did Jesus Christ and His apostles, is an essential privilege and one of the "imprescriptible rights" of every person who resides within the United States of America.

With all good conscience petitioners were obeying God's commandment by presenting to the people at each home the message of God's Word in printed form and inviting them to read the same quietly in their homes. If any thus approached declined to hear, petitioners quietly passed on to the next householder. In no way were they violating the law of morality or of property, nor did their acts infringe on personal rights; nor were they inimical to the safety of the state.

The undisputed evidence shows that they were acting in this capacity as duly ordained ministers of Almighty God preaching the gospel of His Kingdom under Christ Jesus, and were thus exclusively worshiping and serving Almighty God, JEHOVAH, in spirit and in truth according to the God-given commands recorded in Holy Writ and in accordance with the dictates of their conscience. This must be admitted by all.

The courts below did not deny or dispute this fact, but attempted to side-step the constitutional issue and to distinguish this case from other cases of Jehovah's witnesses who were arrested while exercising in like manner rights protected against state invasion under the "due process" clause of the Federal Constitution, by holding that the statute in question was *not sought* to be applied to activities of worship or of "the press" but only to "solicitation of funds", and said:

> " . . . It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in Lovell v. City of Griffin, 303 U. S. 444, . . . and Cincinnati v. Mosier, 14 Ohio Opinions 134."

Turning now to the statute in question: It is to be noted that, according to its terms, it is directed at solicitation "for any alleged religious, charitable or philanthropic cause", and the statute on its face absolutely prohibits the activity of any natural or artificial person in the state or county for these purposes unless such person has first secured the approval of the secretary of the public welfare council. This Court will take judicial notice that the activities of many sponsors of a charitable cause are conducted from house to house and from door to door. This Court will notice from the evidence and will take judicial notice of the fact that the mode or manner of worship or service of Almighty God by Jehovah's witnesses includes, among other things, the activity of going from door to door and leaving at the homes of the people choosing to accept books explaining the Bible and informing them about God's Kingdom as being the only hope of the people and about the snare of religion. In doing this work, which the court below recognizes and finds is the predominant part of the petitioners' work and, *incidental thereto,* they receive from some persons contributions of money tendered at the time of accepting the printed message, which contributions Jehovah's witnesses (including petitioners) use toward defraying the cost of printing and distributing more of like literature. Thus is defrayed, in part, the expense of disseminating this printed message throughout the entire world. The deficits are taken care of from other funds voluntarily contributed by Jehovah's witnesses and others

interested. It can thus be seen that the statute in question ON ITS FACE prohibits the work of petitioners and Jehovah's witnesses. The statute is therefore void *on its face* because of the fact that it unlawfully deprives petitioners of their liberty to worship and serve Almighty God as they are commanded by Him to do, according to His written law, which is supreme, superseding all legislation of human conception and enactment. The statute *on its face* is in direct contravention of the Fourteenth Amendment because it obviously prohibits the lawful and beneficial activity of petitioners.

It is obvious that the work of petitioners is a good work, a work that is at once beneficial *to others* and benevolent, and also an act of worship of JEHOVAH GOD. It is not inimical to the safety of the state and does not violate the law of morals or of property, and none of the exceptions that preclude petitioners from asserting the constitutional estoppel to prevent state encroachment upon the free exercise and enjoyment of their "imprescriptible rights" can be discovered in the evidence. The undisputed evidence conclusively eliminates any such exceptions to the protection provided by the Federal Constitution. Furthermore, by no stretch of the imagination nor by any sound reasoning can it be rightly found and declared that the activities of petitioners and Jehovah's witnesses as herein particularly described are either wholly or partially a cause

a) "religious" or
b) "a bona fide object of charity" or
c) a bona fide object of "philanthropy"

within which all or any of those three classifications attempt has wrongfully and needlessly been made on behalf of the State of Connecticut to confine at least one incidental part of the whole activity of Jehovah's witnesses.

The practice or requirement of having a minister of Almighty God apply to a so-called "secretary of the public welfare council" is peculiarly totalitarian in spirit and in

principle, and therefore un-American, unconstitutional. The statute vests absolute control and discretion in the said "secretary". There is nothing to limit or control his power to grant or refuse a permit. He can refuse to find a "cause" to be approvable by him because of his whim or prejudice or caprice, or purely because he 'does not like the color of applicant's hair'.

This is purely prior censorship and absolutely amputates the right of a true follower of Jesus Christ to worship and serve ALMIGHTY GOD as commanded by Him. We submit that if today the Lord Jesus Christ were on earth in the flesh and went from house to house in the State of Connecticut as He did in ancient Palestine, He would be liable to be incarcerated because of this statute. In times of old the apostles of Jesus Christ likewise went from door to door teaching the people and did receive valuable things and services from persons of good will toward Almighty God to aid in carrying on the work of preaching God's Kingdom message. Now should those apostles be on earth in the flesh and doing this same work in Connecticut they would be liable to be imprisoned, convicted and branded as criminals, as were the petitioners, solely by reason of the fact that they were humbly and sincerely performing a lawful and beneficial (*to others*) work in the community in compliance with and conscientious obedience to the written commands of Almighty God.

We reiterate that the statute *on its face* is void and in direct conflict with the United States Constitution, Fourteenth Amendment, Section 1, because wrongfully and unlawfully controlling, censoring and depriving petitioners of liberty to exercise and enjoy their "imprescriptible rights" of freedom to worship ALMIGHTY GOD according to God-given commands contained in Holy Writ and according to the dictates of their conscience.

Only the "corporate" or "totalitarian" state attempts to regulate the conscience of men or attempts to compel sincere followers of Jesus Christ to obey man's law which

is in derogation of the perfect law of ALMIGHTY GOD.

The statute provides that the public welfare council secretary shall examine into the activity to determine if "religious" or "a bona fide object of charity or philanthropy". It does not set any standards. It gives him unlimited discretion and power. If in his own mind or opinion, which is uncontrolled by law or statute, he determines against the activity of any person, he can arbitrarily refuse to approve the "cause" and refuse to issue a permit and at any time revoke any previous permit.

The law is inquisitorial, un-American.

Until recently a law such as this, as applied to sincere followers of Jesus Christ, was not dreamed of in America. But since the advance of the totalitarian spirit and of the conspiracy to rule America by dictators many strange and unusual things have come to pass. The dictatorial and totalitarian spirit has struck down the institutions of life and liberty in all the countries of Europe, and is rapidly moving forward in this country. In this day of dire distress in the world nothing could be of greater importance than to inform the people of the gracious provisions made by ALMIGHTY GOD for the oppressed, the "refugees" and the poor, and which information can be best transmitted to the people in their homes by means of printed publications carried to them, as petitioners were doing. The dictators would deprive the people of this information, as in this case.

This Court can take judicial notice of the portions of Holy Writ which command that this work of Jehovah's witnesses shall be done in the manner herein described.

This Court can take judicial notice of what Jehovah's witnesses individually and also (through the Watch Tower Bible & Tract Society) collectively say that the Bible plainly teaches, and of the belief of Jehovah's witnesses individually.

In *Jones on Evidence* (Fourth Edition, 1938), Vol. 1, page 230, paragraph 130, it is held that the courts take

judicial notice of the *contents of the Bible*, of the general doctrines maintained by those who claim to hold to its teachings, and that there are numerous organizations of persons called "Christians" respectively maintaining different and conflicting doctrines respecting predestination, eternal punishment, the infallibility of the Scriptures, and the like.

We now particularize some significant things under this ground of error.

The original presentation herein to this Court which by it has been treated as a petition for a writ of certiorari this Court has rightly granted, by reason of the fact that the essential privilege of every person who resides within jurisdiction of the United States of America to worship ALMIGHTY GOD in obedience to His written mandates and in accordance with such person's conscientious belief and understanding of his Maker's requirements so prescribed, has been wrongfully and unlawfully denied to petitioners through the ruling of the courts below.

High courts of this country, including this august tribunal, at regularly set intervals formally invoke the guidance and blessing of ALMIGHTY GOD.

From the birth of this nation it has been recognized as a "Christian nation"; meaning that its inhabitants try to follow the lead of Jesus Christ, the Son of the ALMIGHTY ONE, JEHOVAH.

The law of His Father the Lord Jesus Christ always obeys.

Every follower of Christ Jesus is duty-bound likewise to obey the law of JEHOVAH.—See Psalm 40:8; 1 Peter 2:21; Deuteronomy 11:27.

As one wholly consecrated and devoted to the service of Almighty God under His Son's lead, each of your petitioners, as every one of Jehovah's witnesses, is also an ordained minister of Almighty God to preach the gospel of God's kingdom under Christ Jesus. For one like any of your petitioners willingly to disobey the commandments

of Almighty God would result in the destruction of such disobedient one, they and each of your petitioners sincerely and conscientiously believe.

To worship Almighty God means to obey His commandments; therefore, to serve Him as commanded by His written law. The words of Christ Jesus are, "Thou shalt worship the Lord thy God, and him only shalt thou serve." (Matthew 4:10) "God is a Spirit: and they that worship him must worship him in spirit and in truth."—John 4:24.

According to Black's *Law Dictionary*, "worship" is the offering of honor and adoration to the Divine Being, THE MOST HIGH GOD.

In *Weiss* v. *District Board et al.*, 76 Wis. 177 (212), the court says that worship includes making Jehovah the object of supreme affection and *rendering to Him supreme obedience.*

At time of their arrest each of your petitioners was actively worshiping Almighty God in spirit and in truth. Each of them was conducting himself strictly in obedience to God's commandments and in harmony with their joint and individual conscientious belief and understanding of their Maker's requirements of them. Following are some of the commandments of Almighty God which the follower of Christ Jesus must obey:

"Ye are my witnesses, saith the Lord, that I am God."—Isaiah 43:10-12.

"The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."—Isaiah 61:1, 2.

These texts apply to all followers of Christ Jesus. To all such also the following commandments by the Lord are mandatory:

"This gospel of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come." (Matthew 24:14) "Go ye into all the world, and preach the gospel to every creature."—Mark 16:15.

"If thou dost not speak to warn the wicked from his way, that wicked man shall die in his iniquity; but *his blood will I require at thine hand.* Nevertheless, if thou warn the wicked of his way to turn from it; if he do not turn from his way, he shall die in his iniquity; but thou hast delivered thy soul."—Ezekiel 33:8, 9.

Your petitioners verily believe that at the time of their arrest and as the direct cause of the arrest of each of them each was acting in exact conformity and compliance with the God-given commandments hereinbefore quoted from Holy Writ. Petitioners thus acted not for self-aggrandizement, but to benefit all upright persons. Petitioners so acted in all good conscience, boldly and deliberately pursuing their God-given task by presenting to occupants of homes the message of the Word of Almighty God, tendering such message in printed and *otherwise recorded* form and inviting householders to read the same quietly in their own homes. If any thus approached declined to hear, the minister quietly and promptly passed on. In no way did any of your petitioners violate the law of morality or of property; nor did any of them act so as to infringe on personal rights; nor were their acts inimical to the safety of the state. Neither was any one of them unlawfully or wrongfully competing or in any way competing with any local or other commercial enterprise conducted within the State of Connecticut for private gain.

In going from house to house with the printed and *otherwise recorded* Bible message and thus worshiping Almighty God according to His written law and petitioners' conscientious understanding of its mandate to such as each of them, they were acting exactly as did Jesus Christ and His apostles. Concerning the Lord and Master when on earth it is written: "He went round about

the villages, teaching." (Mark 6:6) "He went throughout every city and village, preaching and shewing the glad tidings of the kingdom of God: and the twelve were with him."—Luke 8:1.

Preaching from house to house was Jesus' method of communicating to the people vital information His Father had given to and authorized Him to publish among the people. That same method Jesus told His disciples to use, saying, "And, as ye go, preach, saying, The kingdom of heaven is at hand. And when ye come into an house, salute it. And if the house be worthy, let your peace come upon it; but if it be not worthy, let your peace return to you. And whosoever shall not receive you, nor hear your words, when ye depart out of that house or city, shake off the dust of your feet."—Matthew 10:7, 12-14.

The apostles of Jesus Christ taught publicly by going "from house to house".—See Acts 20:20.

Thus also each of your petitioners was worshiping Almighty God, Jehovah, according to the God-given commandment and in conformity with the dictates of his conscience, and was so doing within the bounds of the State of Connecticut, the Constitution of which state secures to every person that right against abridgment by any.

It is not within the power or authority of the State of Connecticut, by legislative, judicial or other means, to abridge any person's right freely, conscientiously and exclusively to obey Almighty God.

Human creatures or human powers cannot set aside the Almighty Creator's law nor prevent any creature's conscientious and exclusive obedience to that Supreme One's mandate recorded in Holy Writ.

"No external authority is to place itself between the finite being and the Infinite when the former is seeking to render the homage that is due, and in a mode which

commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."

Cooley, *Constitutional Limitations*,
8th ed., page 968

SUPREME

Almighty God JEHOVAH is supreme.

All who live must depend upon Him and obey Him.

He is the "fountain of life". (Psalm 36:9) One who would live must obey God's law. (John 17:3) "The law of the Lord is perfect, . . . The statutes of the Lord are right, . . . the commandment of the Lord is pure."—Psalm 19:7, 8.

When in ancient times the apostles of Jesus Christ were haled before magistrates, charged with preaching the gospel from place to place and publicly, contrary to whim of certain governing officers, the accused answered in open court: "We ought to obey God rather than men." (See Acts 5:17-42.) According to Holy Writ, those officers then commanded "that they should not speak in the name of Jesus, and let them go". Jesus' apostles positively refused, however, to heed that command of men. Instead, they deliberately chose to resume acting in obedience to the command of Almighty God; and hence we read that "*daily* in the temple, and in *every house*, they *ceased not* to teach and preach Jesus Christ". (Acts 5:40-42) That same rule of the Almighty God every true follower of Jesus Christ today boldly and joyfully and deliberately obeys.

Misuse of legislative devices to prohibit or subjugate to human control any activity such as that performed by each of your petitioners in conscientious obedience to the Creator's written mandates can be rightly deemed to be only an attempt to 'frame mischief by law'.—Psalm 94:20.

Such mischievous attempts to suppress or interdict wholesome and constructive work like that of your petitioners cannot be otherwise rightly regarded than displeasing and reprehensible, as well as abominable, in the sight of both ALMIGHTY GOD and every upright person. Well chosen words are those of Mr. Justice Brandeis as to proscribing of liberty:

> "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding."
>
> Olmstead v. United States,
> 277 U. S. 479
> (Dissenting opinion)

The people of all nations where the Bible is believed to be God's Word of truth have recognized the supremacy of His law as therein written. A recognized authority on the common law has well said:

> "Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being: . . . and consequently, as man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will. . . .
>
> "The will of his Maker is called the law of nature. . . .
>
> "This law of nature, being coeval with mankind, and dictated by God himself, is, of course, superior in obligation to any other. It is binding over all the globe, in all countries, at all times. *No human laws are of any validity if contrary to this* . . .
>
> ". . . Divine Providence . . . hath been pleased at sundry times and in divers manners to discover and

enforce its laws by an immediate and direct revelation. The doctrines thus discovered, we call the revealed or divine law, and *they are to be found only in the Holy Scriptures. . . . . no human laws should be suffered to contradict these.*"

Blackstone Commentaries,
Chase 3d ed., pp. 5-7

Some, without understanding of God's purposes as revealed in His written Word, might contend that the work petitioners were doing was not the proper *way* to worship. On this we say: It is not for the court below or for any court, including the Supreme Court of the United States, to say that a particular act is or is not an act of worship of Almighty God, even as in His Word it is written:

"Who art thou that judgest another man's servant? to his own master he standeth or falleth. Yea, he shall be holden up: for God is able to make him stand."

THE BIBLE, Romans 14:4

ALMIGHTY GOD alone, through His Son Christ Jesus, rightfully and righteously judges as to whether one is genuinely His servant, in spirit and in truth.

This rule is recognized by this Court in the case of *Reynolds* v. *United States,* 98 U. S. 145 (162), wherein it is said:

"Before the adoption of the [United States] Constitution, attempts were made in some of the colonies and States to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. . . . The controversy upon this general subject was animated in many of the States, but seemed at last to culminate in Virginia. In 1784, the House of Delegates of that State having under consideration 'a bill establishing provision for teachers of the Christian religion', postponed it until the next session, and directed that the bill should be published and distributed, and that the people be requested

'to signify their opinion respecting the adoption of such a bill at the next session of assembly'.

"This brought out a determined opposition. Amongst others, Mr. Madison prepared a 'Memorial and Remonstrance', which was widely circulated and signed, and in which he demonstrated 'that religion, or the duty we owe the Creator', was not within the cognizance of civil government. Semple's Virginia Baptists, Appendix. At the next session the proposed bill was not only defeated, but another, 'for establishing religious freedom,' drafted by Mr. Jefferson, was passed. 1 Jeff. Works, 45; 2 Howison, Hist. of Va. 298. In the preamble of this act (12 Hening's Stat. 84) religious freedom is defined; and after a recital 'that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty', it is declared 'that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order'. In these two sentences is found the true distinction between what properly belongs to the church and what to the State."

Concerning the constitutional right of freedom of thought, Mr. Justice Holmes well said:

"If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate."

United States v. Schwimmer,
279 U. S. 644, 654

By the foregoing it conclusively appears that there was a substantial showing, both in the work done by your petitioners and in their pleading in the courts below, of their

rightful and privileged exercise of the liberty to worship ALMIGHTY GOD as that liberty is, for them and all other inhabitants of this country, constitutionally secured against state interdictment, and which liberty was in this case wrongfully abridged. Therefore, as we respectfully submit, under the sound counsel of this Court in *Schneider* v. *Town of Irvington,* supra, and *Lovell* v. *City of Griffin,* supra, the courts below, and particularly the Connecticut Supreme Court of Errors, had both the right and the undeniable and unavoidable duty to recognize and fully perform 'the delicate and difficult task of weighing the circumstances and appraising the substantiality of the *reasons advanced in support of the regulation*' of the free enjoyment and exercise of your petitioners' constitutionally protected liberty; and the courts below having failed to perform that task, this Court, by reason thereof, rightfully has jurisdiction of this cause to remedy the wrong.

It therefore clearly appears that the enforcement of the statute in question deprives petitioners of their right to freely worship Almighty God as commanded by Him. For more than a decade last past Jehovah's witnesses have experienced thousands of arrests and imprisonment after conviction wrongfully by the lower courts in all the states of the Union for doing this good work above described. Many of such courts have wrongfully attempted to distinguish their various ordinances and statutes from the challenged legislation involved in the cases of *Schneider* v. *Town of Irvington,* supra, and *Lovell* v. *City of Griffin,* supra.

This case can be easily decided in petitioners' favor on the issue of "freedom of the press"; but in order to put a "scotch-block" in the path of the continuing misapplication of ordinances by the lower courts and by appellate courts it is *necessary* for this Court to determine and adjudicate once and for all that Jehovah's witnesses, petitioners, have the right to worship Almighty God as commanded by Him, without interference; and therefore

the issue here is far more important than "freedom of the press". Necessarily such emphatic and comprehensive declaration by this Court with respect to the *vital* and *paramount issue* here involved will contribute toward conserving for other purposes the time of even this Court, not to mention numerous other constructive effects thereof.

Now the vital question for this Court to decide is: Shall a sincere follower of Jesus Christ be free in fact in this country to serve ALMIGHTY GOD without censorship, let or hindrance, as such freedom is secured for the country's every inhabitant by the Federal Constitution; or shall a State through dictatorial methods employed by a "welfare council" be permitted to determine under what conditions and the manner in which one may worship ALMIGHTY GOD?

If any State can do so, each individual's service to Almighty God will only be under the direction of "police power".

It is now necessary for this Court to pass upon this important point of "freedom to worship ALMIGHTY GOD" and thus to put a stop to the forward march of oppressive imperialism; and if this "march" is not stopped by this Court, the last bulwark to safeguard the liberties of the American people, this nation within a short time will be in a condition like that which now prevails in totalitarian states of Europe.

POINT TWO

Section 6294 of Connecticut General Statutes as amended by Section 860d of the 1937 Supplement as construed and applied to petitioners unreasonably and unlawfully deprives petitioners of their rights of freedom of speech and of press protected and secured against state invasion under the "due process" clause of the Fourteenth Amendment to the United States Constitution.

According to the undisputed evidence and the findings of the courts below, petitioners were engaged in performing activities of "the press", and the application of the statute to such activity under the guise of 'regulation of solicitation of funds for any alleged religious, charitable or philanthropic cause' unduly abridges petitioners' right of freedom of speech and of press.

We repeat, that the courts below did not deny or dispute this fact, but attempted to side-step the constitutional issue and to distinguish this case from other cases of Jehovah's witnesses who were arrested while exercising in like manner rights protected against state invasion under the "due process" clause of the Federal Constitution, by holding that the statute in question was *not sought* to be applied to activities of worship or of "the press" but only to "solicitation of funds", and said:

> " . . . It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in Lovell v. City of Griffin, 303 U. S. 444, . . . and Cincinnati v. Mosier, 14 Ohio Opinions 134."

Here let it be noted that such a distinction is absolutely frivolous and totalitarian. It is utterly ridiculous to conclude or state that the 'taking of funds' for press activity justifies the state in regulating or censoring "the press". If this were true, then every newspaper in the country would have to go bankrupt or else be censored, regulated, controlled and dictated to as they were in the "dark ages" and as they are now regulated in continental Europe. The principle announced by the court below is iniquitous in the extreme. That court has seized upon the "incidental" part of petitioners' press activity, namely, 'taking of funds,' and declares that activity is subject to regulation and thereby petitioners' "predominant activities", namely, press activity, the State amputates, takes away, regulates and censors. This is certainly a dangerous fallacy, foreign to principles of American liberty, and which should not be permitted to stand.

It is a fundamental proposition, too well settled to require quotation from authorities, that the "freedom of the press" and of "speech" is safeguarded against state invasion by the United States Constitution. See authorities cited under Point One of this brief, supra, pages 15, 16.

It is apparent that the courts below were negligent in consideration of the points here advanced and were not "astute to examine the effect of the challenged legislation" and misaimed their endeavor to perform their "delicate and difficult task of weighing the circumstances and appraising the substantiality of the reasons advanced in support of the regulation" of the exercise by petitioners of this right.

Schneider v. Town of Irvington,
supra

Lovell v. City of Griffin,
supra

The statute here in question, as construed and applied, is essentially the same as the ordinances involved in the two last cited cases. Concerning this type of municipal or state legislation and its misapplication to the work of Jehovah's witnesses, as exemplified in the two last cited cases, this Court's ringing declarations are at once noteworthy and mandatory.

While this statute might be valid as to "other personal activities", it becomes invalid when applied to petitioners' acts of "worship" and "press".

Schneider v. Town of Irvington,
supra

In *Concordia Fire Insurance Co.* v. *Illinois*, 292 U. S. 535, 545, Mr. Justice Van Devanter stated:

> "Whether a statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied. It may be valid when given a particular application and invalid when given another."

We submit that under this Point the judgment should be reversed and petitioners discharged.

POINT THREE

Section 6194 of Connecticut General Statutes as construed and applied to petitioner Jesse Cantwell unreasonably and unlawfully deprives him of his liberty to worship ALMIGHTY GOD according to the God-given mandates recorded in Holy Writ and according to the dictates of petitioner's conscience, and of his liberty of speech and of press, all in violation of the United States Constitution, Fourteenth Amendment, Section 1.

Under the foregoing point for argument we submit that it is clear that the statute has been misapplied as to Jesse Cantwell so as to deprive him of his rights of freedom of speech, of press and of worship of Almighty God as commanded by Him. On this point we here make reference to the argument made under Point Four, infra, this brief, which clearly shows that the facts concerning the action of Jesse Cantwell did not constitute a breach of the peace or a violation of said statute. The facts made the basis of his conviction were solely activity of the press, exercise of freedom of speech and freedom of worship of Almighty God, all secured by the Fourteenth Amendment. Under Points One and Two, supra, this brief, to which reference is here made, we have clearly shown that the activities of Jesse Cantwell were clearly acts protected and secured by the Constitution of the United States.

It is respectfully submitted that under this point of argument the conviction of Jesse Cantwell under the fifth count should be set aside and the statute as applied to Jesse Cantwell declared in violation of the Fourteenth Amendment.

POINT FOUR

The undisputed evidence shows beyond all doubt that the petitioner Jesse Cantwell was not guilty of the offense of inciting a breach of the peace, and to permit his conviction thereof to stand constitutes amputation of his "imprescriptible rights" of freedom to worship ALMIGHTY GOD, and freedom of speech and of press, under the guise of "breach-of-peace statute" violation.

The only ground relied upon by the Supreme Court of Errors and the trial court for convicting the defendant Jesse Cantwell under the fifth count was, as stated by the Supreme Court of Errors, to wit:

> "Jesse Cantwell stopped John Ganley and John Cafferty, both of whom are Catholics, and receiving permission played the phonograph record 'Enemies' which attacked that religion and church. On hearing it* Ganley felt like hitting Cantwell and told him to take his bag and victrola and be on his way. If he had remained he might have received physical violence. Cafferty's mental reaction was to put Jesse off the street and he warned him that he had better get off before something happened to him. . . . It is apparent from the facts found that the playing for audition by loyal Catholics of a record violently attacking their religion and church could well be found to constitute the offense charged, and they warrant finding the defendant Jesse Cantwell guilty. . . . " (R. p. 100)

---

* The tone of voice and manner of delivery of the recorded four-minute speech entitled "Enemies" will be shown in open court at the time of oral argument, by the playing of the record.

There was no evidence that Jesse Cantwell knew in advance that these men were Catholics. There is no evidence that he talked loudly or boisterously or otherwise disturbed the peace. There was no disturbance of the 'public peace'. The trial court found, concerning his conduct, as follows:

> "21. On the same day Jesse Cantwell stopped John Ganley and John Cafferty on Cassius Street and re-receiving permission played the record 'Enemies'. After playing the record he showed them the book 'Enemies', stating that if they wanted to contribute toward the organization they could, or if they were firm believers, they could have the book for nothing.
>
> "27. There was no evidence that the appellants became offensive or entered into any arguments upon refusal to contribute for the purchase of the books."
>
> (R. p. 21)

John J. Ganley testified, substantially, as follows:

> 'My name is John Joseph Ganley; I live at 173 Rosette Street, New Haven. (R. p. 63) Jesse I first saw going from house to house. He had one of those portable victrolas and one of these bags and he asked if we wanted to hear the record and we heard the record. (R. p. 66) This was the first time that I ever saw one of Jehovah's witnesses on that street. (R. p. 69) When I told Jesse to go he picked up his phonograph and went. (R. p. 71) None of us made any attempt to inflict any violence upon Jesse Cantwell; when we told him to go, why he went (R. p. 71), but I imagine if he stayed there we might have started something. (R. p. 72)

John Cafferty testified:

> 'My name is John Cafferty; I live at 20 Cassius Street. (R. p. 73) Jesse played for us the record titled "Enemies" and showed us the book "Riches" and said that we could have it if we wanted to give a small donation and if we could not give we could have it free.

(R. p. 75) I was tempted to do something. Throw him off the street, physically. Practically commit a breach of the peace against him on account of what that record said against my religion. (R. p. 76) I told him he had better get off the street, and he picked up his books and walked up the street and ducked into the next house. (R. p. 76) I gave him permission to play the record. I let him play the record all the way through and I didn't tell him to shut it off.' (R. p. 79)

The undisputed evidence conclusively shows that there was no overt act toward a breach of the peace. The undisputed evidence shows that the petitioner Jesse Cantwell was acting as a peaceful and law-abiding citizen in a prudent manner. He moved on when the complaining witness told him he was not interested. He did all that was possible to do, as it was impossible for him to vanish as a spirit. It certainly was not a violation of the law to call upon the complaining witnesses for the purposes shown above, or to be physically present on Cassius Street. Jesse did no harm to anyone. In *Epoch P. Co.* v. *Davis*, 19 Ohio (NP) 465, the same contention was made as was made by the State of Connecticut, and such was precisely overruled. The court held that to presume that a breach of the peace would be apt to result would be to insult the Negro race. In *Dearborn Publishing Co.* v. *Fitzgerald*, 271 F. 479, it was said:

> "If it be assumed that the article might tend to excite others to breaches of the peace the reply is plain. It is the duty of all officials charged with preserving order and peace to suppress firmly and promptly all persons guilty of disturbing it, and *not forbid* innocent persons to exercise their lawful and equal rights. . . . If defendants' actions were sustained, the constitutional liberty of every citizen freely to speak, write and publish his sentiments on all subjects, being responsible only for abuse of that right, would be placed at the mercy of every public official who for the moment was clothed with authority to preserve the public peace and the right to a free press thus destroyed . . ."

In *Whitney* v. *California*, 274 U. S. 357, this Court, speaking through Mr. Justice Brandeis, said:

> "The fact that speech is likely to result in causing some violence . . . is not enough to justify its suppression."

It seems that by the affirmance of the conviction of Jesse Cantwell under the fifth count by the Supreme Court of Errors his right of freedom of speech and of press has been abridged upon a much thinner excuse than was advanced in the *Dearborn Publishing* case, supra. In that case it was held that even though a breach of the peace or violence is likely to result, it is not enough to justify the suppression of speech.

Certainly such rule should be invoked here.

The conviction of Jesse Cantwell under the fifth count is the rankest violation of civil rights that one could imagine. It is plainly 'framing mischief by law' in violation of the command of Almighty God.

Jesse's being found guilty of inciting a breach of the peace by obeying the command of Almighty God is, we submit, beyond the understanding of lovers of righteousness and liberty.

The sum and substance of the facts alleged to support the conviction are solely that the *message* delivered by Jesse with his portable phonograph was not acceptable to the complaining witness. The complaining witness should have been arrested and convicted instead of Jesse. Ganley and Cafferty admitted that they were almost moved to commit a breach of the peace and strike Jesse. They would have unjustifiably done that had he remained in their presence.

To suffer the misapplication of the "breach of the peace" statute to abridge constitutionally-safeguarded rights of petitioner Jesse Cantwell is outrageous. If the rule of law stated by the Connecticut Supreme Court of Errors in upholding the conviction of Jesse Cantwell under the fifth

count is to be permitted to stand, then each person in America should tremble before speaking, for fear of not pleasing all the people. Even the Lord Jesus Christ could not please all the people, and the ancient courts announced the same rule as to Him as was announced by the Connecticut Supreme Court of Errors against petitioner Jesse Cantwell.

If this Court allows that ruling on the fifth count to stand as to Jesse Cantwell, it means the end of free speech in this country. We respectfully submit that the court below was in error in sustaining the conviction of Jesse Cantwell under the fifth count. That ruling of the Connecticut court in the last resort is in conflict with the holding in *People* v. *Ludovici,* 13 N. Y. S. (2) 88, and *People* v. *Downer,* 6 N. Y. S. (2) 566, on substantially the same facts as in the case at bar. We suggest that this Court should grant petitioner Jesse Cantwell's plea for reversal of the judgment of conviction entered against him under the fifth count.

Among the oldest cases on the precise point now before this Court is the one recorded in the Bible book of Acts of the Apostles, chapter 5, beginning at verse twenty-six. Disciples of Jesus Christ were publicly informing the people, disseminating the truths of the Word of Almighty God in obedience to His command. Religionists were grieved and angered because God's truth was being proclaimed. The clergy and other religionists conspired against the

publishers of the truth. Those conspirators instigated the arrest of the disciples, who were haled into the judgment hall. A high Roman court then sitting in Palestine heard that case. After hearing the evidence, one of the members of that court, Gamaliel, a learned counselor, arose and, addressing his fellow members of the court and all present, said:

> "Refrain from these men, and let them alone: for if this counsel or this work be of men, it will come to nought: but if it be of God, ye cannot overthrow it; lest haply ye be found even to fight against God."

This temperate and salubrious principle all right-minded persons always follow.

Respectfully submitted,
JOSEPH F. RUTHERFORD
HAYDEN COVINGTON
Attorneys for Petitioners

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

MAR 21 1940

No. 632.

JESSE CANTWELL, NEWTON CANTWELL AND RUSSELL CANTWELL,
Appellants;

JESSE CANTWELL,
Petitioner.
v.
THE STATE OF CONNECTICUT,
Respondent,

Appeal from and Certiorari to the Connecticut Supreme Court of Errors.

APPELLEE'S AND RESPONDENT'S BRIEF.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

JESSE CANTWELL, NEWTON CANTWELL AND RUSSELL CANTWELL, *Appellants*
JESSE CANTWELL, *Petitioner*
v.
THE STATE OF CONNECTICUT, *Respondent*

No. 632.

APPELLEE'S AND RESPONDENT'S BRIEF.

Reference to Official Report of Opinion Below.

The opinion delivered in the Supreme Court of Errors for the State of Connecticut is printed in 126 Connecticut 1, and also in the Record, page 97-102.

Statement of the Case.

Section 6294 of the General Statutes of the State of Connecticut as amended by Section 860d of the 1937 Supplement provides:

> UNLAWFUL SOLICITING FOR PHILANTHROPIC PURPOSES. No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the

county in which such person or organization is located unless such cause shall have been approved by the *secretary of the public welfare council.* Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both.

I.

As to Third Count.

The Appellants, a father (Newton Cantwell) and his two minor sons (Jesse and Russell) aged sixteen and eighteen respectively, were arrested, charged, tried and convicted upon the third count of an information charging them with soliciting money for an alleged religious cause without securing the approval of the Secretary of the Public Welfare Council. The Finding shows that the Appellants were members of a religious organization known as Jehovah's Witnesses and they were identified by individual credentials bearing their names and signatures and attesting to the fact that hey were ordained ministers to preach the Gospel. In this capacity they called from house to house on Cassius Street, a public highway in the City of New Haven, carrying with them bags containing several books and pamphlets written in several different languages, a portable phonograph, and a set of phonograph records, which when played, introduced the books in their possession. Their manner of approach would be to ask permission to play the record and upon receiving it, would play the same and the record, when played, would refer to the contents of the book bearing its name.

The Appellants would then ask the prospects if they would buy the book and if not, they would accept any contribution that would be made. The Appellants after playing the record which contained a violent attack on the Catholic religion, asked the prospects if they would buy the book and if not they (Appellants) would accept any contribution they (the prospects) could make. If the prospect was not in a position to do this a pamphlet was left on condition that it would be read. None of the persons solicited were members of the religious organization known as Jehovah's Witnesses. Cassius Street is in a thickly settled neighborhood where about ninety per cent of the residents, including those approached by the Appellants, some two hundred to three hundred people, embrace the Catholic religion. The Appellants did not apply for, or obtain a certificate of approval as provided in the statute (R., p. 19, 20).

II.

As to Fifth Count.

Petitioner, Jesse Cantwell stopped John Ganley and John Cafferty on Cassius Street and receiving permission played the record "Enemies." After playing the record petitioner showed them the book "Enemies," stating that if they wanted to contribute toward the organization they could, or if they were firm believers, they could have the book for nothing. On hearing the record Ganley felt like hitting the accused and told him to take his bag and victrola and be on his way. If the accused remained he might have received physical violence. Cafferty's reaction was to throw the petitioner off the street physically and he warned petitioner that he (petitioner) had better get off the street before something happened to him. The record contained a violent attack on the Catholic religion and Ganley and Cafferty were loyal Catholics (R., p. 21).

ARGUMENT.

As to Third Count.

Summary:

It is the duty of a Court to sustain a legislative enactment unless its invalidity is demonstrated beyond a reasonable doubt.

One who assails a classification made in a legislative enactment carries the burden of showing that it does not rest upon any reasonable basis and is palpably arbitrary.

In passing upon the constitutionality of a statute it must be borne in mind that a large discretion is necessarily vested in the State Legislature to determine not only what the interest of public convenience and welfare require, but what measures are necessary to secure such interests.

In declaring a law unconstitutional a Court must necessarily cover the same ground already covered by the Legislative Department in deciding upon the propriety of enacting a law, and must indirectly overrule the decision of the Legislative Department. The task is, therefore, a delicate one and only to be entered upon with reluctance and hesitation.

The Statute being general in its application, embracing all persons under substantially like circumstances, and not being an arbitrary exercise of power, does not deny to petitioners equal protection of the law, nor violate any other provisions of the Constitution of the United States.

The action of the Legislature in passing said statute was within the police power of the State and should be upheld.

The State may protect its citizens against fraudulent solicitation and when it enacts a statute to do so, all persons are required to abide thereby.

The full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine is not interfered with by a statute seeking to regulate

solicitations for funds, where the only solicitation sought to be prohibited is solicitation for fraudulent purposes and no tests or limitations of religious belief, practice or teachings are imposed.

The safeguards of the Fourteenth Amendment against State action interfering with the freedom of speech, press or the exercise of religion are not to be construed as prohibiting regulation of the exercise of said rights when necessary to protect the public interest.

The task of the Court is to weigh the circumstances surrounding the legislative enactments, and to appraise the substantiality of the reasons advanced in the support of the regulation which may affect the enjoyment of the rights of free speech, and of the press and of religious worship.

The construction and interpretation of the statute adopted by the Supreme Court of the State of Connecticut is binding and will be accepted by this Court.

The fact Findings of the Court below are conclusive and resort may not be had by this Court to the printed evidence.

The classification of religious, charitable or philanthropic causes as a group is a reasonable one and not arbitrary. The exemption from the provisions of the statute of soliciting from members of the organization for whose benefit the soliciting is done within the county where the person or organization is located, is not a discrimination against persons or organizations included within the provisions of the statute, but is a limitation having a reasonable basis.

The statute does not permit censorship of any ideas or teachings sought to be disseminated, but simply provides for determination as to whether the cause sought to be benefited is a religious one, or is a bona fide object of charity or philanthropy, and conforms to reasonable standards of efficiency and integrity.

The fact that Appellants in their own minds justified vio-

lation of the statute because of their religious convictions does not establish any legal justification for their conduct nor does the claimed conflict between the statute and their religious convictions render the statute unconstitutional.

The 5th and 6th Assignments of Error urged upon this Court cannot now be successfully asserted because the Supreme Court of Errors, acted under the Rules and Practice of the State of Connecticut, and in accordance with a definitely established principle, the Supreme Court of the United States cannot now search the record.

The claim that the evidence was not sufficient to bring them within the statute, is not now open to consideration in view of the abandonment of attack upon the Finding in the Supreme Court of Errors of Connecticut.

As to Fifth Count.

The conviction of petitioner on the fifth count was legal because the contents of the phonograph record and books were such as are not shielded by the right of free speech, worship or press.

Argument Proper.

The question before this Court is: Did the State of Connecticut, in legislating, by Section 6294 of the General Statutes as amended, that a religious organization should not solicit funds, except among its own members, and in the county within which it or the person soliciting was located, without a certificate of approval, enact a valid law within the proper exercise of the police power of the State? The Appellants claim it did not, and the statute is void and unconstitutional because:

1. It unlawfully abridges and denies Appellants freedom to worship.

2. It abridges the right of free speech.
3. It abridges the right of free press.
4. It deprives petitioners of liberty without due process of law.
5. It denies petitioners the equal protection of the laws.

Section 6294 of the General Statutes of the State of Connecticut, Revision of 1930, as amended by Section 860d of the Cumulative Supplement to the General Statutes of 1937, is entitled "Unlawful solicitation for philanthropic purposes," and forms a part of Chapter 330 entitled "Offences against Public Policy." This section was originally enacted as Chapter 409 of the Public Acts of the State of Connecticut of 1917. Said statute remains unaltered since the date of its enactment except for the designation or title of the official to issue the permit, made necessary by changes in the designation and title of the administrative agency for public welfare, formerly known as the State Board of Charities, later designated as the Welfare Board, and by the amendments of 1937 as the Public Welfare Council. The title of the section and the title of the chapter re-inforces the obvious intent and purpose of this statute as being one primarily designed to protect the public from the perpetration of fraud in the solicitation of money or other valuable things under the guise or cloak of religion, charity, or philanthropy. By the express terms of the statute the only activity of any alleged religious, charitable or philanthropic body, or person engaged in the furtherance of the work of such a body, that is attempted to be regulated is the solicitation of contributions of money or other valuable thing.

It is conceded that if freedom of speech and of the press, secured by the First Amendment to the Constitution of the United

States is abridged by this statute, the statute would be in contravention of the 14th amendment. (*Schneider v. State of New Jersey*, 60 Sup. Ct. 146, 150.) However, the statute neither expressly nor by implication impugns in any way those rights commonly regarded as freedom of speech.

> "The constitutional liberty of speech and of the press, as we understand it, implies a right to freely utter and publish whatever the citizen may please, and to be protected against any responsibility for so doing, except so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offense, or as to their falsehood and malice they may injuriously affect the standing, reputation or pecuniary interests of individuals. Or, to state the same thing in somewhat different words, we understand liberty of speech and of the press to imply not only liberty to publish, but complete immunity from legal censure and punishment for the publication, so long as it is not harmful in its character, when tested by such standards as the law affords. For these standards we must look to the common-law rules which were in force when the constitutional guaranties were established, and in reference to which they have been adopted."
>
> Cooley's Constitutional Limitations, 8th Ed., vol. 2, p. 886.

The "liberty" of worship undoubtedly includes the right to entertain the beliefs, to adhere to the principles, and to teach the doctrines to which the Appellants adhere.

> Hamilton v. Regents of the University of Calif., 293 U. S., 245 p. 262.

In the instant case it is difficult to see wherein the application of this statute might in any way interfere with the freedom of these Appellants to worship as they see fit. In no way does this statute attempt to limit or define the Appellants' mode of worship or restrict or attempt to restrict their teachings or doctrine. The

fact that the Appellants may believe as an article of their religious faith that this law was in contravention of their own religious belief furnishes no sound legal or constitutional basis for their violation of it.

Commonwealth v. Plaisted, 148 Mass. 375.
Reynolds v. U. S., 98 U. S. 145.

The Appellants further complain that the statute as construed and applied to them infringes upon the freedom of the press. They base this claim on the ground that as part of their religious belief it is a duty devolving upon them to distribute certain printed matter to the public. Undoubtedly their activity in disseminating literature is protected by the so-called "freedom of the press." While the dissemination of this literature may be their fundamental purpose, still it in no wise is the basis upon which the Supreme Court of Errors of Connecticut sustained their conviction in the lower Court. The activity of the Appellants complained of, and which violated the statute in the instant case, was their solicitation of funds at the time that they distributed this literature. The statute in question restricts in no way the distribution of pamphlets and literature, nor if the activity of these itinerant disseminators of literature was limited to merely receiving contributions from those who might be inclined to donate to them without solicitation, their activities would not come within the purview of the statute. The offenses complained of against these Appellants is that of soliciting funds. Whether this solicitation was their primary purpose, or merely incidental to the spread of the Gospel in accordance with their views, is not the controlling point. As was said by the Connecticut Supreme Court in its opinion:

> "As already indicated, and as is plain from its terms, Section 6294 does not apply, and is not sought to be applied in this case, to the dissemination, neither by sale or free distribution, of printed matter by the

defendants. As the defendants recognize in their brief, the purpose of the statute is to protect the public against imposition in the matter of solicitations of funds purportedly for religious, charitable, or philanthropic causes. This is not, and is not claimed to be, objectionable on constitutional grounds. It is such solicitation which brings the defendants within the statute, not their other and apparently predominate activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in *Lovell v. City of Griffin*, 303 U. S., 444, 58 Sup. Ct., 666, and *Cincinnati v. Mosier*, 14 Ohio Opinions 134, the first of which prohibited the distribution of literature of any kind, whether delivered free or sold, without a permit from the city manager, and the second required a license for peddlers selling goods carried by hand."

The "due process" guaranteed by the 14th Amendment to the United States Constitution is not denied or abridged by the statute in question. As heretofore pointed out, the sole purpose and object of this statute is to prevent the perpetration of fraud on the public in the solicitation of funds for an alleged religious, charitable or philanthropic cause. Under the provisions of the statute the process is established whereby a permit may be obtained. Definite standards to guide the Secretary of the Welfare Council in the issuance of those permits is provided and it is no objection to the constitutionality of the statute that some discretion is vested in the administrative officer to determine whether or not a given cause is religious, charitable or philanthropic. Furthermore, in the event that the discretion of the administrative officer were abused and he acted in an arbitrary or unreasonable manner, his activity would be subject to judicial review. The words religious, charitable and philanthropic all have a well understood and a well defined meaning, and nothing in the statute purports to indicate that they are used otherwise than in their ordinary broad, signifi-

cance. There is no attempt to limit or restrict the meaning of the word religious or religion.

This statute can not be attacked on the grounds that it denies due process of law in that discretion is vested in an administrative officer, namely, the Secretary of the Welfare Council to issue the permit. It is a proper exercise of the legislative function to enact a police regulation of the character in question, and the Legislature could delegate to an administrative officer the power to exercise its will and carry out its policy in accordance with the expression of the legislative will contained in the statute.

> Connecticut Company v. Norwalk, 89 Conn., 528-531.

The exercise of discretion by the Secretary of the Public Welfare Council would not necessarily be final and conclusive on the person applying for a permit. "If an administrative order be so unreasonable as to justify judicial interference, it is within our judicial power, on proper appeal, to set it aside."

> Norwalk v. Connecticut Company, 89 Conn., 537 at 542.

Nor does the fact that the statute in the instant case fails to incorporate a statutory proceeding for appeal from a decision of the Secretary of the Public Welfare Council prevent recourse to the Courts to pass upon the reasonableness of any action that he might take.

> "The action or non-action of administrative boards may become the subject of judicial inquiry or review whenever it is claimed, among other conditions, that it works material damage to individual or corporate rights or invades or threatens such rights, or is so unreasonable as to justify judicial intervention, or is not consonant with justice, or that a legal duty has not been performed."

> Woodmont Assoc. v. Milford, 85 Conn. 517, 522.

The claim is made in the Appellants' brief that the statute here in question as construed and applied is essentially the same as the ordinance involved in the case of *Schneider v. State of New Jersey, (Town of Irvington)*; 60 Supreme Court Reporter 146, and *Lovell v. City of Griffin*, 303 U. S., 444.

It is respectfully submitted that the case of *Schneider v. State of New Jersey (Town of Irvington)* is not similar to the instant case, nor is the ordinance therein ruled upon similar to the statute under consideration here, because that ordinance provided that no person should canvass, solicit (for any purpose), distribute circulars or other matter or call from house to house without first having received a written permit so to do. The Connecticut statute under consideration makes no mention of canvassing, distributing circulars or other matter, or calling from house to house, and only limits the right to solicit when the solicitation is made for money or other valuable thing for a religious, charitable or philanthropic cause or organization. An examination of the two regulations, therefore, at once establishes the very limited scope of the Connecticut statute, and because it is obviously solely designed and intended to prevent the citizens of Connecticut from being imposed upon by fraudulent appeals in the name of religion, charity and philanthropy, it is a valid exercise of the police power of the State. The New Jersey ordinance clearly does not fall within that category. It must be admitted that the opportunity to use religious pretensions to cover up fraudulent schemes of the grossest nature is ever present and is an evil from which the public, under the police power of the State, should be protected.

Unlike the ordinance discussed in the Schneider case the present statute does not seek to place any restriction upon a communication of any views or the advocacy of any cause, nor to set up any power of censorship in a police officer to determine what literature may be distributed or ideas communicated or who may distribute it.

Unlike the ordinance discussed in the Schneider case, *supra*, or the ordinance considered in *C.I.O. v. Hague*, 307 U. S. 496, the statute here in question in no way, shape or manner attempts to set up a previous administrative censorship of the exercise of right of speech and assembly, or upon the dissemination of literature.

The ordinance passed upon in *Lovell v. The City of Griffin supra* forbade the distribution by hand or otherwise of literature *of any kind* without written permission from the City Manager. Clearly a simple reading of this ordinance indicates the difference between it and the Connecticut statute.

On page 19 of the Appellant's brief the following appears:

> "This Court will notice from the evidence and will take judicial notice of the fact that the mode or manner of worship or service of Almighty God by Jehovah's Witnesses include, among other things, the activity of going from door to door and leaving at the homes of the people choosing to accept books explaining the bible and informing them about God's kingdom as being the only hope of the people and about the snare of religion. In doing this work, which the Court below recognizes and finds is the predominant part of the petitioners' work and, *incidental thereto*, they receive from some persons contributions of money tendered at the time of accepting the printed message, which contributions Jehovah's Witnesses (including petitioners) use toward defraying the cost of printing and distributing more of like literature thus is defrayed, in part, the expense of disseminating this printed message throughout the entire world. The deficits are taken care of from other funds voluntarily contributed by Jehovah's Witnesses and others interested. It can thus be seen that the statute in question ON ITS FACE prohibits the work of petitioners and Jehovah's Witnesses."

A reading of the statute will clearly disclose that any of the activities described in the above quotation are not affected in any way by the statutory provisions. The only subject to which the

statute relates is the *solicitation* for religious purposes. In other words, if all the Appellants did in the present case was as outlined in the above quotation then there would have been no conviction in the lower Court under Section 6294, as amended, because there would have been no solicitation of funds.

The restriction placed upon the class of persons who must apply for a permit is reasonably designed to effectuate the purpose for which the statute is enacted, to wit: the prevention of fraud. The statute permits solicitation of funds within the county wherein the solicitor or the organization for which he is soliciting is located, without a certificate. It is natural to suppose that if a person approached was a member of an organization within his county he would be familiar with or would have some familiarity or means of ascertaining the integrity of the organization or the person soliciting. On the other hand, if the organization or person soliciting were not located within the county, the persons solicited might have little or no means of ascertaining whether the solicitation was free from fraud, or that the cause was a bona fide one.

There are but eight counties in the State of Connecticut, all of approximately equal size. There are no cities or towns which do not lie wholly within the borders of one county. With this geographical set-up the use of county lines as boundaries for solicitation without a certificate of approval is a reasonable one since it does not create such a small area that it would be natural to expect the residents of the area to be familiar with persons or organizations of another.

> "The police power of a State, in a comprehensive sense, embraces its whole system of internal regulation, by which the State seeks not only to preserve the public order and to prevent offenses against the State, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood

which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own so far as is reasonably consistent with a like enjoyment of rights by others."

Cooley's "Constitutional Limitations" Eighth Edition p. 1223.

In passing upon the constitutionality of a statute it must be borne in mind that a large discretion is necessarily vested in the State Legislature to determine not only what the interests of public convenience and welfare require, but what measures are necessary to secure such interests.

Cooley's "Constitutional Limitations" 8th Ed. p. 334.
Louisville & Nashville R. R. v. Melton, 218 U. S. 52; 53.
Magoun v. Ill. Tr. & Sav. Bk., 170 U. S. 294.
Orient Ins. Co. v. Doggs, 172 U. S. 557, 562.
Royster Guano Co. v. Virginia, 253 U. S. 412, 415.

It is the duty of a Court in the exercise of great care and caution to make every presumption and intendment in favor of the validity of a statute and sustain a legislative enactment unless its invalidity is demonstrated beyond a reasonable doubt.

Beach v. Bradstreet, 85 Conn. 344.
State v. Lay, 86 Conn. 141.
State v. Muolo, 119 Conn. 323.
Lindsley v. Natural Carbonic Gas Co., 200 U. S. 61, 78.

In declaring a law unconstitutional, a Court must necessarily cover the same ground which has already been covered by the legislative department in deciding upon the propriety of enacting the law, and they must indirectly overrule the decision of that

co-ordinate department. The task is therefore a delicate one and only to be entered upon with reluctance and hesitation.

Cooley's "Constitutional Limitations" 8th Ed. p. 334, 371.

The rules by which the contention that the classification made by a statute must be tested are:

(1) The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard; and avoids what is done only when it is without any reasonable basis and, therefore, is purely arbitrary.

(2) A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

(3) When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

(4) One who assails the classification made in a legislative enactment carries the burden of showing that it does not rest upon any reasonable basis and is palpably arbitrary.

Bachtel v. Wilson, 204 U. S. 36, 41.

Louisville & Nashville R. R. Co. v. Melton, 218 U. S. 36.

Ozan Lumber Co. v. Union County Bank, 207 U. S. 251, 256.

Munn v. Illinois, 94 U. S. 113, 132.

Henderson Bridge Co. v. Henderson City, 173 U. S. 592, 615.

Lindsley v. Natural Carbonic Gas Co., 220 U. S. 78, 79.

Whitney v. California, 274 U. S. 357, 369.

The Appellants can not now resort to the evidence in pursuing Assignment of Error No. 5, but are bound by the finding of facts of the trial Court because, before the Supreme Court of Errors of Connecticut, all assignments of error which sought corrections or additions to the findings of fact of the trial Court were abandoned.

Under the procedural rules of Connecticut practice as set forth in the Connecticut Practice Book the appeal, therefore, must be decided on the facts as found in the finding without resort to the evidence.

As pointed out by the opinion of the Court below:

> "Assignments of error pertaining to correction of the finding having been abandoned, this appeal is to be determined upon the facts as found, without the resort to the evidence which is invited in brief and argument." (R., p. 98).

This Court has repeatedly held that in cases coming to it from the Supreme Court of a State it accepts as binding the findings upon issues of fact duly made in that court.

> Waters-Pierce Oil Co. v. Texas, 212 U. S. 86, 107.
> Rankin v. Emigh, 218 U. S. 27, 34.
> Herfoot v. Farmers & Merchants Bank, 218 U. S. 281, 288.
> Miedreich v. Lauenstein, 232 U. S. 236, 243.
> Aetna Life Ins. Co. v. Dunken, 266 U. S. 389, 394.

It is submitted that the instant case comes within the general rule and does fall within either of the exceptions which are where a Federal right has been denied as a result of a finding shown by the record to be without evidence to support it, and where the findings of fact are so intermingled with a conclusion of law as to a Federal right as to make it necessary, in order to pass upon the Federal question, to analyze the facts.

Aetna Life Ins. Co. v. Dunken *supra.*

Assignment of Error No. 6 claims error because the Supreme Court of Errors of Connecticut "erred in ruling that the taking of money by appellants at the time of delivering to some persons, printed literature, was solicitation."

No such ruling was made by the Court below. In fact there is no finding of fact to that effect. The finding clearly shows solicitation on the part of the Appellants which is the evil protected against by the statute.

For the foregoing reasons, it is respectfully submitted that the conviction on the third count of the information should be sustained.

II.

There Is No Basis For the Petitioner's Eighth Assignment of Error.

The third point urged in the Petitioner Jesse Cantwell's brief questions the validity of Section 6194 of the General Statutes of Connecticut.

It is submitted that this statute is in no way involved in the instant case as there was no conviction of the petitioner thereunder.

The Petitioner was convicted on the fifth count of the information (R., p. 2) and from a reading of that count it appears that the offense charged was common law breach of peace.

The opinion of the Connecticut Supreme Court is also illuminating on this feature of the case and reads as follows:

> "The fifth count charges a breach of peace by acts which are within the common law definition of that offense. . . . Section 6194 of the General Statutes does not define the crime known as breach of the peace, but merely specifies certain ways of committing it. It may be committed in ways other than those so specified." (R., p. 99, 100).

The Courts of the several states have the right to construe their own statutes. This is a function to be exercised exclusively by them, and their judgment upon such matters is conclusive upon all Federal Tribunals.

Lindsley v. Natural Carbonic Gas Co. *supra.*
Palmer v. Texas, 212 U. S. 118, 131.
U. S. v. Munson, 213 U. S. 118.
Stutsman v. Wallace, 142 U. S. 293.
Moores v. National Bank, 104 U. S. 625.
Bauserman v. Blut, 147 U. S. 627.
Fairfield v. Gellanton, 100 U. S. 47.

III.

Conviction of Petitioner, Jesse Cantwell, Under Fifth Count of Information Was Legal and Should Be Upheld.

Petitioner, Jesse Cantwell, was convicted on the fifth count which charged the offense of a common law breach of peace.

The Finding of the trial Court includes the following pertinent facts: Jesse Cantwell stopped John Ganley and John Cafferty, both of whom were Catholics, and receiving permission, played the phonograph record "Enemies" which violently attacked that religion and church and showed Ganley and Cafferty a copy of the book "Enemies." On hearing the record, Ganley felt like hitting Cantwell and told him to take his bag and victrola and be on his way. If he had remained he might have received physical violence. Cafferty's mental reaction was to put Jesse off the street and he warned him that he had better get off before something happened to him.

These acts and this conduct on the part of the Petitioner are within the common-law-definition of breach of peace. (R., p. 21.)

11 C. J. S., p. 818.
2 Brill Cyclopedia of Criminal Law, p. 1523.
8 Am. Jur., p. 844.
8 R. C. L. Section 305, p. 284.
1 Bishop Criminal Law (9th Ed.), Section 539.

It is not necessary to show that other persons were actually provoked to the point of violence or disturbance of the peace.

1 Bishop Criminal Law (9th Ed.), Section 539.
State v. Farrall, 29 Conn. 72.
State v. Warner, 34 Conn. 276, 279.
Davis v. Burgess, 54 Mich. 514, 517; 20 N. W. 540.
Delk v. Commonwealth, 166 Ky. 39, 45; 178 S. W. 1129.
L. R. A., 1916B, 1417.

Nor is a specific intent to provoke a breach of peace essential; it is sufficient if the acts are such as tend to produce it.

State v. Shelby, 95 Minn. 65; 103 N. W. 725.

The doing of acts or the use of language which, under circumstances of which the person is or should be aware, are calculated or likely to provoke another person or other persons to acts of immediate violence may constitute a breach of the peace.

49 L. R. A., (N. S.) 919.
Holmes v. State, 135 Ark. 187, 189; 204 S. W. 846.
Faulkner v. State, 166 Ga. 645, 665; 144 S. E. 193.

The rule is as applicable where, instead of being directly spoken, the objectionable language is communicated, as here, by means of a victrola operated by the person accused (Petitioner) or by banner or placard as in *West v. Commonwealth*, 208 Ky. 735; 271 S. W. 1079.

The effect or tendency of words or conduct depends largely upon the circumstances and is a question of fact.

State v. Moser, 33 Ark. 140.

It is apparent from the facts found that the playing for audition by loyal Catholics of a record violently attacking their reli-

gion and church could well be found to constitute the offense charged and to find Petitioner, Jesse Cantwell, guilty.

While the right to propagate religious views is not to be denied, one will not be permitted to commit a breach of peace under the guise of preaching the Gospel.

> Delk v. Commonwealth, 166 Ky. 39, 47; 178 S. W. 1129.

The record played by the Petitioner, Jesse Cantwell, contained the following:

> "The most seductive and subtle instrument employed to deceive man is religion, because religion has the appearance of doing good, whereas it brings upon the people great evil. There are many different religions, all of which are deceptive, *are the instruments of the enemy Satan*, and all work to the injury of men. This book submits the conclusive proof that for more than fifteen hundred years a great religious system, operating out of Rome, has by means of *fraud* and *deception* brought untold sorrow and suffering upon the people. *It operates the greatest racket ever employed amongst men and robs the people of their money and destroys their peace of mind and freedom of action.* That religious system is vigorously pushing its *political schemes* amongst all the nations of earth, with the avowed purpose of seizing control of the nations and *ruling the people by cruel dictators.* Some of the nations have fallen under that *wicked power*, and all nations are now greatly endangered. Because of the increasing power of the enemy the liberties of the people are rapidly passing away and all nations are rushing into infidelity and into ultimate destruction." (R., p. 41).

The Petitioner likewise showed Ganley and Cafferty the book "Enemies" (R., p. 21).

This book contained the following on pages 198 and 199:

> "All organizations on the earth that are in opposition to God and his kingdom, therefore, necessarily take the name of '*Babylon*' *and* '*harlot*,' *and those names specif-*

ically apply to the leading religious organization, the Roman Catholic church, which claims to be the mother of the so-called Christian religion. That mighty religious organization, foretold in the Scriptures, *uses the method of harlots to induce politicians and commercial traffickers* and others to fall into her arms and yield to her supposed charms. In the Scriptures this organization is likened unto a 'strange woman, which flattereth with her words,' and *which entices the credulous persons that are void of understanding to yield to her influence.* In the prophecies the harlot of religious organization is pictured as bedecking herself in gaudy and showy clothes, peculiar hats, lace, and silk shirts and other gaudy apparel, and she is represented as sauntering forth and indulging in singing seductive songs to inveigle others into her trap, that she might have personal adulation and praise of men and at the same time reap also pecuniary gain." (R., p. 48, 49).

and on page 288:

"Note this part of the prophecy says: *'And shall commit fornication with all the kingdoms of the world upon the face of the earth'*; according to the Revised Version: *'Shall play the harlot with all the kingdoms of the world.' Such is exactly what the Roman Catholic Hierarchy organization is doing and has been doing from and after 1918 and will continue to do until the beginning of Armageddon*; and while she is doing that Jehovah is doing his 'strange work' of exposing her wickedness. *The activity of the old whore in committing harlotry with all the kingdoms of the world appears* to be more than merely establishing diplomatic relationship with all nations and being recognized as a temporal power. It surely means the carrying out of the objective of the Roman Catholic Hierarchy *to set up a Fascist government controlling the nations of the earth*, that the Hierarchy may arbitrarily rule the nations in a dictatorial manner." (R., p. 49).

and on page 292:

"The prophecy of the Lord shows that modern Tyre, the Catholic organization, *commits fornication with all the nations and gains her desire.* When the Hierarchy

has gained complete temporal power of the earth, that will in her mind fully establish the conclusion that her desire has been fully accomplished, and then she will say, 'Peace and safety'; and then the 'ten horns,' that is, all the ruling powers of the nations, 'receive power with the beast,' the League of Nations combine being in fact a league of Fascism or combined Fascist government dominated by the Roman Catholic Hierarchy. 'And the woman (Devil's visible religious organization, the harlot) which thou sawest is that great city (the Hierarchy organization), which reigneth over (combined Fascism) the kings of the earth.'" (R., p. 49).

and on page 295:

"The Roman Catholic Hierarchy with an air of superiority, and with great claim of power and authority from God, have approached the kings of the earth and said to them, in effect: 'We bestow upon you the divine right to rule. We give you holy sanctions and heavenly blessings, and by reason thereof your positions as political rulers are sacred and are ordained of God, and therefore so far as the people are concerned, you are viewed as constituting the "higher powers"; and we who compose the Hierarchy are the spiritual "higher powers" and superior to all other earthly power.' The true higher powers are Jehovah and Christ Jesus. The claim that earthly organizations are the higher powers is therefore false. *In this fraudulent representation and claim made by the Roman Catholic Hierarchy the harlot proceeds to gain control over millions of gullible men.* Such constitutes the 'merchandise' and 'hire' of the harlot by which she draws men into her clutches. *The Roman Catholic Hierarchy has fraudulently posed as the representative of God with full divine authority to bestow blessings on kings, while in truth and in fact she is the representative of the Devil. The Hierarchy uses 'the hire of the harlot' to induce the political powers to believe that she should dictate the policy of the world, and thus carry out her purpose to set up a dictatorial rule of the earth.*" (R., p. 50).

and on page 301:

"Fascism and Naziism mean one and the same thing and are the instrument of the Roman Catholic Hier-

archy, the child of the Devil, to gain control of the earth by the Hierarchy and turn all people against God and his kingdom. The Roman Catholic Hierarchy classes every one that is opposed to her as 'red' or 'communist' and this is done to incite the people against those who stand for whatsoever is right." (R., p. 50).

and on pages 328-329:

"*The chief visible enemy of God, and therefore the greatest and worst public enemy, is the Roman Catholic religious organization. For centuries that organization scornfully and arrogantly has ridden upon the backs of the peoples and nations and robbed the people of their just earnings.* The day of that *wicked* institution must come to an end. That organization, that is to say, the Roman Catholic 'Hierarchy of Jurisdiction,' for years has boastfully said and still says: 'The gates of hell shall not prevail against (us).' These words of Jesus Christ concerning his own organization, which is the habitation of Almighty God, are misapplied by the Roman Catholic Hierarchy; and this is further evidence of the presumptuous sin of that religious organization." (R., p. 51).

and on page 330:

"It is the Roman Catholic 'Hierarchy of Jurisdiction' that has *falsely* and *fraudulently* assumed to shepherd the Catholic population and *rob them and fleece them.* Claiming to be shepherds, *they have really been wolves; and to that wicked crowd Jehovah says: 'Howl, ye shepherds, and cry and wallow yourselves in the ashes, ye principal of the flock, for the days of your slaughter* and of your dispersions are accomplished, and ye shall fall like a pleasant vessel'."

"*The Roman Catholic 'Hierarchy of Jurisdiction,' the religious system, is hypocritical in the extreme, and God hates a hypocrite, a racketeer, and a liar, all of which that gang is.*" (R., p. 51).

No question is raised that the petitioner did not have the right to preach his beliefs and distribute books and pamphlets in furtherance of his belief and teachings, but it is respectfully sub-

mitted that the foregoing passages contain obscene, and blasphemous language and statements of a scandalous character, defamatory and libellous, such as are not permitted or shielded by the right of free speech, and are included in the limitations placed on such right.

Acts and conduct, in violation of social duties, subversive of good order and contrary to the law of the land are not beyond the reach of statutory enactments simply because the offender claims the course of conduct was dictated by his religious belief.

Reynolds v. United States, 98 U. S. 145.
Commonwealth v. Plaisted, 148 Mass. 375.

Clearly, therefore, the conviction of the petitioner on the fifth count of the information was proper and legal and should be upheld.

Respectfully Submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 632.—October Term, 1939.

Jesse Cantwell, Newton Cantwell and Russell Cantwell, Appellants, *vs.* The State of Connecticut.	On Appeal from and Certiorari to the Supreme Court of Errors of the State of Connecticut.

[May 20, 1940.]

Mr. Justice Roberts delivered the opinion of the Court.

Newton Cantwell and his two sons, Jesse and Russell, members of a group known as Jehovah's witnesses, and claiming to be ordained ministers, were arrested in New Haven, Connecticut, and each was charged by information in five counts, with statutory and common law offenses. After trial in the Court of Common Pleas of New Haven County each of them was convicted on the third count, which charged a violation of § 6294 of the General Statutes of Connecticut,[1] and on the fifth count, which charged commission of the common law offense of inciting a breach of the peace. On appeal to the Supreme Court the conviction of all three on the third count was affirmed. The conviction of Jesse Cantwell, on the fifth count, was also affirmed, but the conviction of Newton and Russell on that count was reversed and a new trial ordered as to them.[2]

By demurrers to the information, by requests for rulings of law at the trial, and by their assignments of error in the State Supreme Court, the appellants pressed the contention that the statute under which the third count was drawn was offensive to the due process clause of the Fourteenth Amendment because, on its face and as construed and applied, it denied them freedom of speech and prohibited their free exercise of religion. In like manner they made the point that they could not be found guilty on the fifth count, without violation of the Amendment.

[1] General Statutes § 6294 as amended by § 860d of the 1937 supplement.
[2] — Conn. —; 8 A. (2d) 533.

We have jurisdiction on appeal from the judgments on the third count, as there was drawn in question the validity of a state statute under the federal Constitution, and the decision was in favor of validity. Since the conviction on the fifth count was not based upon a statute, but presents a substantial question under the federal Constitution, we granted the writ of certiorari in respect of it.

The facts adduced to sustain the convictions on the third count follow. On the day of their arrest the appellants were engaged in going singly from house to house on Cassius Street in New Haven. They were individually equipped with a bag containing books and pamphlets on religious subjects, a portable phonograph and a set of records, each of which, when played, introduced, and was a description of, one of the books. Each appellant asked the person who responded to his call for permission to play one of the records. If permission was granted he asked the person to buy the book described and, upon refusal, he solicited such contribution towards the publication of the pamphlets as the listener was willing to make. If a contribution was received a pamphlet was delivered upon condition that it would be read.

Cassius Street is in a thickly populated neighborhood, where about ninety per cent of the residents are Roman Catholics. A phonograph record, describing a book entitled "Enemies", included an attack on the Catholic religion. None of the persons interviewed were members of Jehovah's witnesses.

The statute under which the appellants were charged provides:

"No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the county in which such person or organization is located unless such cause shall have been approved by the secretary of the public welfare council. Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both."

The appellants claimed that their activities were not within the statute but consisted only of distribution of books, pamphlets, and periodicals. The State Supreme Court construed the finding of the trial court to be that "in addition to the sale of the books and the distribution of the pamphlets the defendants were also soliciting contributions or donations of money for an alleged religious cause, and thereby came within the purview of the statute." It overruled the contention that the Act, as applied to the appellants, offends the due process clause of the Fourteenth Amendment, because it abridges or denies religious freedom and liberty of speech and press. The court stated that it was the solicitation that brought the appellants within the sweep of the Act and not their other activities in the dissemination of literature. It declared the legislation constitutional as an effort by the State to protect the public against fraud and imposition in the solicitation of funds for what purported to be religious, charitable, or philanthropic causes.

The facts which were held to support the conviction of Jesse Cantwell on the fifth count were that he stopped two men in the street, asked, and received, permission to play a phonograph record, and played the record "Enemies", which attacked the religion and church of the two men, who were Catholics. Both were incensed by the contents of the record and were tempted to strike Cantwell unless he went away. On being told to be on his way he left their presence. There was no evidence that he was personally offensive or entered into any argument with those he interviewed.

The court held that the charge was not assault or breach of the peace or threats on Cantwell's part, but invoking or inciting others to breach of the peace, and that the facts supported the conviction of that offense.

First. We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment.[3] The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The consti-

[3] Schneider v. State, 308 U. S. 147, 160.

tutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.[4] The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom. No one would contest the proposition that a state may not, by statute, wholly deny the right to preach or to disseminate religious views. Plainly such a previous and absolute restraint would violate the terms of the guarantee.[5] It is equally clear that a state may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment. The appellants are right in their insistence that the Act in question is not such a regulation. If a certificate is procured, solicitation is permitted without restraint but, in the absence of a certificate, solicitation is altogether prohibited.

The appellants urge that to require them to obtain a certificate as a condition of soliciting support for their views amounts to a prior restraint on the exercise of their religion within the meaning of the Constitution. The State insists that the Act, as construed by the Supreme Court of Connecticut, imposes no previous restraint upon the dissemination of religious views or teaching but merely safeguards against the perpetration of frauds under the cloak of religion. Conceding that this is so, the question remains whether the method adopted by Connecticut to that end transgresses the liberty safeguarded by the Constitution.

[4] Reynolds v. United States, 98 U. S. 145; Davis v. Beason, 133 U. S. 333.
[5] Compare Near v. Minnesota, 283 U. S. 697, 713.

The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise.

It will be noted, however, that the Act requires an application to the secretary of the public welfare council of the State; that he is empowered to determine whether the cause is a religious one, and that the issue of a certificate depends upon his affirmative action. If he finds that the cause is not that of religion, to solicit for it becomes a crime. He is not to issue a certificate as a matter of course. His decision to issue or refuse it involves appraisal of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth.

The State asserts that if the licensing officer acts arbitrarily, capriciously, or corruptly, his action is subject to judicial correction. Counsel refer to the rule prevailing in Connecticut that the decision of a commission or an administrative official will be reviewed upon a claim that "it works material damage to individual or corporate rights, or invades or threatens such rights, or is so unreasonable as to justify judicial intervention, or is not consonant with justice, or that a legal duty has not been performed."[4] It is suggested that the statute is to be read as requiring the officer to issue a certificate unless the cause in question is clearly not a religious one; and that if he violates his duty his action will be corrected by a court.

To this suggestion there are several sufficient answers. The line between a discretionary and a ministerial act is not always easy to mark and the statute has not been construed by the State court to impose a mere ministerial duty on the secretary of the welfare coun-

[4] Woodmont Assn. v. Milford, 85 Conn. 517, 522; see also Connecticut Co. v. Norwalk, 89 Conn. 528, 531.

cil. Upon his decision as to the nature of the cause, the right to solicit depends. Moreover, the availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action.[7]

Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may be at some slight inconvenience in order that the state may protect its citizens from injury. Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.[8] The state is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience. But to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution.

Second. We hold that, in the circumstances disclosed, the conviction of Jesse Cantwell on the fifth count must be set aside. Decision as to the lawfulness of the conviction demands the weighing of two conflicting interests. The fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that freedom to communicate information and opinion be not abridged. The state of Connecticut has an obvious interest in the preservation and protection of peace and good order within her borders. We must determine whether the alleged protection of the State's interest, means to which end would, in the absence of limitation by the federal Constitution, lie wholly

[7] Near v. Minnesota, 283 U. S. 697.

[8] Compare Lewis Publishing Co. v. Morgan, 229 U. S. 288, 306-310; New York ex rel. Bryant v. Zimmerman, 278 U. S. 63, 72.

within the State's discretion, has been pressed, in this instance, to a point where it has come into fatal collision with the overriding interest protected by the federal compact.

Conviction on the fifth count was not pursuant to a statute evincing a legislative judgment that street discussion of religious affairs, because of its tendency to provoke disorder, should be regulated, or a judgment that the playing of a phonograph on the streets should in the interest of comfort or privacy be limited or prevented. Violation of an Act exhibiting such a legislative judgment and narrowly drawn to prevent the supposed evil, would pose a question differing from that we must here answer.[9] Such a declaration of the State's policy would weigh heavily in any challenge of the law as infringing constitutional limitations. Here, however, the judgment is based on a common law concept of the most general and undefined nature. The court below has held that the petitioner's conduct constituted the commission of an offense under the State law, and we accept its decision as binding upon us to that extent.

The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious. Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions. Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application.

Having these considerations in mind, we note that Jesse Cantwell, on April 26, 1938, was upon a public street, where he had a right to be, and where he had a right peacefully to impart his views to

[9] Compare Gitlow v. New York, 268 U. S. 652, 670-1; Thornhill v. Alabama, No. 514 Oct. T. 1939, pp. 6-11.

others. There is no showing that his deportment was noisy, truculent, overbearing or offensive. He requested of two pedestrians permission to play to them a phonograph record. The permission was granted. It is not claimed that he intended to insult or affront the hearers by playing the record. It is plain that he wished only to interest them in his propaganda. The sound of the phonograph is not shown to have disturbed residents of the street, to have drawn a crowd, or to have impeded traffic. Thus far he had invaded no right or interest of the public or of the men accosted.

The record played by Cantwell embodies a general attack on all organized religious systems as instruments of Satan and injurious to man; it then singles out the Roman Catholic Church for strictures couched in terms which naturally would offend not only persons of that persuasion, but all others who respect the honestly held religious faith of their fellows. The hearers were in fact highly offended. One of them said he felt like hitting Cantwell and the other that he was tempted to throw Cantwell off the street. The one who testified he felt like hitting Cantwell said, in answer to the question "Did you do anything else or have any other reaction?" "No, sir, because he said he would take the victrola and he went." The other witness testified that he told Cantwell he had better get off the street before something happened to him and that was the end of the matter as Cantwell picked up his books and walked up the street.

Cantwell's conduct, in the view of the court below, considered apart from the effect of his communication upon his hearers, did not amount to a breach of the peace. One may, however, be guilty of the offense if he commit acts or make statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended. Decisions to this effect are many, but examination discloses that, in practically all, the provocative language which was held to amount to a breach of the peace consisted of profane, indecent, or abusive remarks directed to the person of the hearer. Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.

We find in the instant case no assault or threatening of bodily harm, no truculent bearing, no intentional discourtesy, no personal

abuse. On the contrary, we find only an effort to persuade a willing listener to buy a book or to contribute money in the interest of what Cantwell, however misguided others may think him, conceived to be true religion.

In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds. There are limits to the exercise of these liberties. The danger in these times from the coercive activities of those who in the delusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their equal right to the exercise of their liberties, is emphasized by events familiar to all. These and other transgressions of those limits the states appropriately may punish.

Although the contents of the record not unnaturally aroused animosity, we think that, in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question.[10]

The judgment affirming the convictions on the third and fifth counts is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

So ordered.

[10] Compare Schenck v. United States, 249 U. S. 47, 52; Herndon v. Lowry, 301 U. S. 242, 256; Thornhill v. Alabama, No. 514, Oct. T. 1939.